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An Examination of the Rights and Roles of Women
In Contemporary Islamic Society:
A Case Study of Iran

by

Alexis Kirsten Pepin

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Abstract

This thesis examines the position and rights of women within contemporary Islamic society. It provides consideration of the sources of Islamic Law, the Qur'an and Hadith, and what is said specifically on the topic of women. It examines also the issues of human rights, focusing on certain rights abuses to which women are subjected in particular, and it considers the positions of many prominent Islamic thinkers regarding women's rights. The status of women is considered closely within a case study of Iran, which focuses on both the secular regime of the Shah and the Islamic Republic of the Ayatollah Khomeini. The interpretation of Islamic ideals and their application and impact are considered. In the end, conclusions are drawn about the effect of Islam on the position and rights of women within Islamic society, and how its impact has been and continues to be felt in their daily lives.

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For my dad, Denis,

Who leads by example, through

Critical thinking, discipline, and hard work,

And who continues to inspire me always.

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Chapter 1 – Introduction

The purpose of this thesis is to examine the position of women in the Qur'an and the Hadith, and to consider how this scriptural foundation of Islam has been interpreted and applied to affect women's rights within contemporary Islamic society. In order to analyze concisely the status of women, I intend to critique the Islamic Republic of Iran as a case study. A study such as this is important for several reasons. First, in any discussion of contemporary Islamic politics, it is necessary to have an understanding of the scriptural foundation of Islam and to consider how the fundamental sources affect modern issues and concerns. Second, it is important to understand the historical development and themes that are relevant in a consideration of modern adherence to Islam. Third, it is imperative to consider how a religion, which appears to place a high priority on the attainment of social justice, is manipulated politically by some to facilitate or to justify human rights violations and abuses around the world. One must examine critically Islamic societies in which human rights are not being supported and question whether this is a reflection of Islam, of the political regime in power, or of other social, historical and cultural circumstances.

Before proceeding with this inquiry, it is important to examine briefly a number of themes and perspectives that influenced this research. The literature used in this thesis is multidisciplinary and includes works that span much of the twentieth century as well as the very beginning of the twenty-first century. Additionally, this thesis will not examine *all* issues that pertain to a woman's rights within Islamic

society in the twenty-first century. I believe that doing justice to the overall subject of Muslim women's human rights would necessitate a much larger and more detailed body of work than will be completed within the parameters of this thesis. This work will provide a snapshot of women's rights within Iran within a specific period of time; while the focus is on women within a specific Islamic society, my hope is that the matters discussed herein will apply broadly also to common issues that affect contemporary Muslim women throughout the Middle East. Though specific governing structures and domestic laws may differ, I would suggest that it is fair to believe that there are fundamental aspects of any such debate that will transcend nation-states and communities and be applicable to the lives and rights of most Muslim women who live within Islamic states.

Throughout Islamic history, the concepts, relationships and perspectives that were developed by early Muslim societies have remained at the core of every debate pertaining to the roles, obligations and rights of women. Historians, theologians, sociologists and political scientists can all agree that the year 622, the *Hijra*, is the defining time in the evolution of Islam. Prior to this year, when social and ethical principles were instilled by the Prophet Muhammad, there was no Islamic society. In fact, at least in terms of civilized organization, there was no society at all. There was only *Jahiliya*, a concept that has become synonymous with barbarism and ignorance. The Prophet Muhammad, through his words and through his actions, was successful in pushing tribal traditions and practices to a more 'civilized' notion of Islamic society – one in which social justice, compassion, ethics and stability were

paramount. The result of this incredible shift was a time in Islamic history that has been idealized ever since: the Golden Period. Due in part to the fact that the community was small enough to be led and governed by one man, Muhammad was able to steer his followers to live their lives according to Islamic principles and values. At that time in the seventh century, these notions would have constituted very significant reforms and progressive perspectives of life and humanity. Taken as they were and transplanted to another period of time, things may appear differently. It is this very issue that lies at the crux of many contemporary debates. The applicability of the Prophet's life and traditions to the current world has been debated since the Golden Period and, I believe, will continue to be contested in perpetuity. It is for this reason that it is important to consider the positions of some of the most respected and revered thinkers within the sphere of Islamic thought and politics.

The twentieth century has borne witness to many prolific writers and thinkers who have offered strong perspectives on classical Islamic thought and its application – through politics, law or social relationships – within contemporary societies. Their focus has been multidisciplinary (resulting in anthropological, historical, sociological and politics works) and their backgrounds have differed (fundamental contributions have been made by Westerners, feminists and Arab and Islamic scholars) but the common thread among them is that each has made an important contribution to political discourse through his or her position on the interpretation of the sacred texts – the Qur'an and the Hadith.

Islamic works on the interpretation of the rights and status accorded to women in the Qur'an and the Hadith are many. Muhammad Abduh, known as the father of Islamic modernism, wrote extensively on women's issues and Islam, having identified the need to reconcile traditional Islamic thought with the new challenges introduced by modernity at the beginning of the twentieth century. For a Westerner such as myself, it is difficult to access much of his direct work, as his writings are available only in partial translation by authors like Malcolm Kerr in *Islamic Reform: The Political and Legal Theories of Muhammad Abduh and Rashid Rida* (1966) and Charles C. Adams in *Islamic Modernism in Egypt: A Study of the Modern Reform Movement Inaugurated by Muhammad Abduh* (1933). However, the weight of his work is clear. He is the first of many thinkers who highlight the necessity of reconciliation between classical Islamic thought and modern challenges and lifestyles. Though the sacred texts remain static, the world around them does not.

One of Abduh's students, the Muslim feminist Kacem Amin, continued to develop this reformist discourse by examining the status of Muslim women in Egypt. In his attempt to understand the reasoning behind women's seclusion and veiling, he developed groundbreaking theories about gender stereotypes and female sexuality. In *The Liberation of the Woman* (1928), he suggests that a woman's sexuality is addressed on a social level (through veiling and segregation) not because she is inferior or because she should be considered subordinate to her male counterpart, but rather, because it is women who are more able to control sexual impulses and behavior. Consequently, social measures aimed at women could be construed to

exist in order to protect men. Not surprisingly, Amin's work received much attention and inspired responses from those not sharing his reformist thinking.

One such response was garnered by famed Muslim revivalist, Mawlana Abu al-Ala Mawdudi (1903-1979). Renowned as an ideologue of a resurgent Islam, Mawdudi was a prolific thinker and writer whose work has had a profound impact on other theorists and has been circulated and translated widely throughout the Islamic world and beyond. In 1941 he founded the *Jamaat i-Islami* (the Islamic Association), a religious and political movement focused on a traditional interpretation of Islam. In *Purdah and the Status of Women in Islam* (1939), we see, what may be for the first time in literature, the impact a traditional interpretation of the Qur'an and Hadith can have on the status of women. His work is profound in that he considers women to be an indication of the degree of Westernization permeating Islamic society. He examines in detail the shortcomings – particularly moral and social – of the West and prescribes for Islamic society a uniquely Islamic social system, in which members must adhere more literally to the tenets of Islam. In this case, the fundamental points of adherence pertain to the presentation of women within the public sphere – seclusion, veiling and segregation. Mawdudi's work has inspired traditionalists and those supporting an Islamic resurgence around the world.

One such traditionalist is the almost equally iconic Sayyid Qutb (1906-1966). Accepting Mawdudi's views on an Islamic social system, Qutb wrote extensively on the characteristics of an Islamic state and analyzed in detail the problems associated

with Muslims attempting to conform to un-Islamic models of society. Few Islamic thinkers have had such a profound impact on contemporary Islamic thought, which is in part due to his writing and in part due to his efforts to implement his beliefs within society via his involvement in the *al-Ikhwan al-Muslimin* (the Muslim Brotherhood). In *Sayyid Qutb: Ideologue of Islamic Revival*, Yvonne Yazbeck Haddad explains why Qutb remains such a model for Muslims revivalists: he shared a common pattern of life experience. His early upbringing in an Egyptian village was traditional, but this was followed by exposure and enticement by the West. Over time, he became disillusioned with Western practices and ideals, developing the belief that un-Islamic models were unable to address issues of morality and identity, which was required by Islamic society. His solution was to return to his Islamic beginnings and proscribe traditional adherence to an entirely Islamic way of life. His two most famous works, *Social Justice in Islam* (1949) and *Milestones* (1964) have remained very influential for Islamist thinkers and have inspired Islamic revivalist movements around the world, particularly since his execution in Cairo in 1996.

Along the same end of the ideological spectrum is Ayatollah Khomeini, who became a global symbol for Islamic fundamentalism. Synonymous with the Islamic Revolution, which resulted in the creation of the Islamic Republic of Iran, Khomeini emerged as a political mastermind who was able to use, perhaps more effectively than ever before, the political ideology of Islam as a means to control a nation-state and its people, putting into power a government controlled by a religious elite whose influence permeated all spheres of life. Khomeini's work and rule are unique in that,

though he espoused a view of Islam that very much suppresses the freedom of women (particularly within the public sphere), his revolution capitalized on the support of women, who made significant contributions to the overall success of the movement. This development is, of course, complex and merits further detailed discussion in the body of this thesis, and more particularly, in my case study of the Islamic Republic of Iran.

When considering the status of women in the Islamic world, it is equally important to examine the views of Islamic modernists and reformists who turn to the sacred texts and see not an unchangeable script for all of society but, rather, choose to examine the socio-historical context of events and extract from the Qur'an and Hadith principles which can be applied to Muslim society regardless of time period. In other words, whereas Islamic traditionalists or Islamists look to the texts and see a static blueprint for all of society, modernists and reformers see a progressive history of Islam and a changing world of today. For these thinkers, the Qur'an and the Hadith contain fundamental principles to be extracted from literal texts and applied to contemporary issues.

The life and work of Abdolkarim Soroush is a leading example of reformist thought. Having held an important position within Khomeini's republic, Soroush's political thinking evolved from a position of Islamic traditionalism to one of reform, allowing him to emerge as the foremost Iranian and Islamic political philosopher and theologian. Today, he advocates an unusual theoretical framework in which reason helps negotiate between modern influences and religious beliefs. Whereas

modernists believe that the Qur'an advocates improvements and that every generation should strive to improve within its own particular societal circumstances, traditionalists believe that the Islamic scripture presents the ideal picture. Thus, for traditionalists, like the Ayatollah Khomeini, it is the behavior of society that must be readjusted to fit the historical ideal, as it is not the place of man to alter the path proscribed by God. Soroush offers to his supporters a compromise of sorts. He concurs with the traditionalist conception of the immutable and static essence of religion, but then constructs an argument based on reason and communicated with religious language in order to support the reconciliation of changes within the modern world with religious acceptability. Unlike many of his predecessors, Soroush identifies Islam as being only one part of a larger context of influences that affect the governing of contemporary societies. In *Reason, Freedom and Democracy in Islam: Essential Writings of Abdolkarim Soroush* (Ed. Mahmoud Sadri and Ahmad Sadri, 2000), Soroush speaks to multiple audiences simultaneously through layered language and analogies, making his work complicated yet characteristic of an intellectual existing within a society recognized for limited rights and freedoms.

Also important within the Iranian political context is the work of Ali Shariati (1933-1977), who also contributed significantly to the reformist discourse. Beginning with concerns shared by his Islamist colleagues, Shariati chose a different solution. Rather than idealizing the Golden Period and advocating a return to the fundamentals of the literal sacred texts, Shariati chose to derive inspiration from past

Islamic successes and to rely on the use of *itjihad* as a means to reconcile contemporary problems with Islamic principles.

This line of thinking – the use of *itjihad*, or independent reasoning – had been supported and pushed forward by previous Muslim voices, like Muhammad Iqbal, who is today considered a forerunner of contemporary Islamic reformism and was made famous for his profile in South Asia. As John Esposito posits in *Voices of Resurgent Islam* (1983), Iqbal's remedy for a depressed community was a new synthesis of Western and Islamic sciences, which would serve to create a bridge between tradition and modernity. Iqbal's perspective was unique in that he recognized the unity of Islam and its application in totality to be very important. In *Reconstruction of Religious Thought in Islam* (1934) he presents his call for the reconstruction of Islamic thought, which has become a fundamental point of departure for many of today's Islamic reformists.

Within this broad consideration of Islamic thought and politics, it is also important to consider the very significant contributions of Muslim feminists and liberal reformists (Muslim and non-Muslim). Since the 1970s, these thinkers have put forward more progressive readings of the Qur'an, Hadith and sacred history. Their work and beliefs seem to be gaining currency and profile as public concern (now seemingly global in scope) surrounding the status and treatment of women within Islamic societies continues to escalate. The focus seems to bifurcate between two main formats of thought: 1) a feminist/liberal reformist view of the sacred texts

and, 2) discussions/case studies of the treatment (or, rather, mistreatment) of women within the contemporary Islamic world.

Discussion of the daily status of women is critical to an understanding of women's issues that transcends theoretical discourse. In 1978, Lois Beck and Nikki Keddie published *Women in the Muslim World*, a collection of articles about women's lives in a variety of Islamic communities. Their work is significant in that it provides a comprehensive snapshot of women's lives around the Muslim world, and also because they choose to hinge their case studies on three pervasive themes: legal and socioeconomic change, historical perspectives, and ideology, religion and ritual. Along a similar vein, Elizabeth Warnock Fernea paints a vivid picture of the roles of Islamic women in *Women and Family in the Middle East* (1985). The scope is geographically broad in terms of case studies, yet focuses more on the micro-level of women's lives. In addition to examining a woman's role in the family, Fernea considers factors such as health and education, war politics and revolution, religion and law, work, and identity, which provide her reader with a firmer basis regarding the day-to-day rights of women. In 1994, Geraldine Brooks, a journalist and foreign correspondent, published a series of horrifying stories about the oppression and abuses faced by Islamic women. Her book, *Nine Parts of Desire: the Hidden World of Islamic Women*, undoubtedly provides insight to the lives of women who endure terrible treatment in the name of Islam. Finally, to provide a more up-to-date account of goings-on in the world of Muslim women, Margaret Speaker Yuan, put forward a collection of articles and accounts in *Women and Islam* (2005), which

provides a more balanced account of women's rights and roles. I believe that the contribution of these liberal reformists is significant; it is through their eyes that I have gained a greater appreciation for the mistreatment and everyday challenges that women throughout the Muslim world face. However, I do not believe that all Muslim women are oppressed, nor do I believe that Islam alone is responsible for subjecting women to subordinate roles within society or to improper treatment. For this reason, I chose to supplement these valuable case studies and accounts with the work of other writers who chose to examine the Qur'an, Hadith and Muslim history in search of progressive interpretations and applications.

The sacred texts of Islam and the life of the Prophet Muhammad are central to any examination of women within Muslim society. After the death of the Prophet, the Muslim ideals of society were carried forward by his companions and a series of rulers. Over the course of time, the Qur'an and Hadith became recognized as the two main sources of Islamic law, which is considered the lynch pin of any Islamic society. To have only two main sources of law sounds simple enough, but having read them in their entirety on more than one occasion, I can attest to the fact that Islamic law is complicated, vague, sporadic and generally unclear, given the incompatibility of the sacred texts with any sort of book of laws and, due to the fact that, out of necessity, there developed a bifurcation in the Islamic legal system: religious law and courts versus state-administered justice. For this reason, I found it very helpful to turn to the work of the following thinkers in order to gain a better understanding of interpretations and applications of the fundamentals.

In *Major Themes of the Qur'an* (1980), Fazlur Rahman thematically analyzes the Qur'an, providing many helpful examples of interpretations of specific *suras* and phrases. His work is comprehensive in that he provides both reformist and traditionalist interpretations of specific excerpts of the sacred text, in order to illustrate differences between the two perspectives. Barbara Stowasser's book, *Women in the Qur'an, Traditions and Interpretations* (1994), focuses solely on women and includes detailed discussions of the roles of women within sacred history – the significance of the Prophets wives, as well as other women within history. Along similar lines, Fatima Mernissi, a Moroccan sociologist and feminist, examines the relationship between interpretations of Islamic Law and socio-historical circumstances in her book *Beyond the Veil: Male-Female Dynamics in Modern Muslim Society* (1987). This work fuses the sources and interpretations of Islamic Law with both historical and contemporary realities faced by women. Also in a more recent context, Yvonne Haddad and John Esposito explore issues of gender and interpretations of Islam by discussing specific examples throughout the Islamic world in their work, *Islam, Gender and Social Change* (1998). In *Women's Identity and the Qur'an: a New Reading* (2004), Nimat Hafez Barazangi explores complex issues of identity and self-awareness in her pedagogical reading of the Qur'an. Also significant is *The Qur'an, Women and Modern Society* (2005) in which Asghar Ali Engineer discusses how Qur'anic interpretation affects the every day lives of contemporary Muslim women.

Alongside these notable political thinkers, there are a few more feminist scholars worthy of mention – particularly within the realm of human rights issues. In the article, "The Experience of Islamic Feminism in Iran" (2000), Mahboobeh Abbassgholizadeh, the editor-in-chief of *Farzaneh: Journal of Women's Studies and Research,* outlines the course of Islamic feminist thought and development in the Islamic Republic of Iran since the Revolution. According to Zahra Davar's article, "Independence and Economic Rights of Women" (2001), many Iranian feminists today insist that it is important that those for whom international rules and standards of human rights are to be enforced regard them not as imposed from outside, but rather as corresponding and compatible with their own values. On a broader level, in "The Road to Globalization runs through Women's Struggle" (2004), Mahmoud Monshipouri has highlighted how feminist and Nobel Laureate Shirin Ebadi has argued that the laws themselves are insufficient and that there is a need for mechanisms to implement laws. The mere existence of a strong infrastructure for dealing with the law is different from having the tools and mechanisms to deliver. Zehra Arat considers more specifically the issues of women's rights in Islam in her article, "Women's Rights in Islam: Revisiting Qur'anic Rights" (2001), suggesting that, although the concept of human rights appears to expand and to be incorporated formally in increasing numbers of international covenants and documents, the extent to which these rights are actually enjoyed in a day-to-day basis is less than satisfactory. She highlights the plight of Muslim women as being one of the most challenging areas of human rights. In "The Universality of Human Rights: Lessons

from the Islamic Republic" (2000), Ann Elizabeth Mayer focuses specifically on one case study. She highlights the inherent challenges faced by Iranians due to a governance structure that allows ruling clerics, alone, to be deemed capable of ascertaining what Islam requires with respect to social norms and behaviors that will impact directly how issues of human rights are understood and dealt with.

One last important category of thought is that of Western scholars. Though Islamic culture and practices are not indigenous to thinkers from the West, the scholarship produced and research conducted has resulted in an important contribution, in particular, to the issue of Islamic jurisprudence and the development of Islamic law. As with any discussion of Islamic politics, the point of departure is an examination of the two main sources of Islamic law, the Qur'an and the Hadith. As highlighted by previous sources, issues of interpretation and application are complex and can appear quite vague or arbitrary. In *Conflict and Tensions in Islamic Jurisprudence* (1969), Noel J. Coulson discusses his belief that the Qur'an was never intended to provide for a comprehensive legal or political system within which rights and obligations are clear and indisputable. Certainly, the implementation of the ethical behavior provided by the Qur'an did serve to provide a framework of sorts for the creation of the first Islamic society in the seventh century, but this does not mean that its principles were intended to create any sort of legal code. In his article "Sources and Development of Muslim Law" (1965), Ahmad bin Mohamed Ibrahim presents a similar perspective, adding that the legal bearing of some Qur'anic principles is disputable, whereas that of others simultaneously apply to more than

one sphere of law. While Coulson propounds that the legal matter that is, in fact, contained within the Qur'an and Hadith is a collection of piecemeal rulings on particular issues scattered over a wide variety of different topics, Joseph Schacht suggests that only two kinds of legal matter can be differentiated within the Islamic community: subject matter upon which the *shari'a* failed to maintain its hold (penal law, taxation, constitutional law, law of way, and law of contracts and obligations), and subject matter upon which the hold of the *shari'a* has remained uncontested (purely religious duties, family law – marriage, divorce, and maintenance), law of inheritance, and law of endowments for religious institutions. Truly, it was Schacht's book, *The Origins of Muhammadan Jurisprudence* (1950) that paved the way for a contemporary understanding of the sources and development of Islamic law.

Acknowledging that issues of human rights in and of themselves are perhaps too broad for the scope of this thesis, my hope is to contribute to an understanding of how the scriptural foundation of Islam affects the rights, roles and status of women within contemporary Islamic society *and* how a desire to improve these may affect the political interpretation of the scriptural foundation of Islam.

Following this introductory chapter, Chapter Two provides a specific examination of the position of Islamic women, according to the Qur'an and the Hadith. To best determine how women are affected by the application and interpretation of Islamic Law, I will examine three distinct realms of life: the role of the woman as a believer of Islam, her role within the family, and her role within

society as a whole. In conjunction with this, some interpretive issues and matters of Islamic law will be discussed vis-à-vis the presentation of the perspectives of notable scholars like Fazlur Rahman, Noel Coulson, Joseph Schact, H.A.R. Gibb, Asghar Ali Engineer and Said Ramadan. Chapter Three provides a discussion of human rights, including a consideration of Western and Islamic perspectives, as well as an examination of the compatibility of human rights concepts with Islamic principles, with a specific focus on certain kinds of human rights abuses against women. Chapter Four incorporates the perspectives of Islamic thinkers such as Abdulkarim Soroush, Sayyid Qutb, Abu al-A'la al-Maududi and the Ayatollah Khomeini. Chapter Five places this study within the context of the Islamic Republic of Iran, which provides a unique case study due to its unique history of both reformative and reactive social movements and due to its being the only homogenously Shi'ite nation-state. In conclusion, I sum up my observations and consider – with respect to women's rights and status – the impact of contemporary issues like the effects of globalization and the desire of many Iranians to move towards democratic reform of the nation-state's political architecture.

Chapter 2: The Fundamental Sources of Islamic Law

Introduction

The purpose of the first part of this thesis is to examine the position of the woman in Islam, according to Islamic Law. To illustrate this most fully, this chapter will consider both Islamic Law – its nature and its fundamental sources – and three specific spheres of a woman's life according to Islamic Law: her individual relationship with God as a believer in the faith of Islam, her role within the family, and her role within society as a whole. Additionally, it is critical to understand the socio-historical circumstances that were present in pre-Islamic Arabia and during the life of the Prophet, and how these have affected the development and application of Islamic Law both throughout history and currently. It is only once an examination of the fundamental sources has been conducted that one will be able to consider fully how Islamic Law impacts the lives and position of women today within the Muslim world.

The Unique Concept of Islamic Law

Prior to an examination of the sources of Islamic Law, it is important to consider the nature of the term, 'Islamic Law'. Unlike any notion of law in a Western tradition, Islamic Law is unique and inherently dualistic in nature, involving the competing demands of religion and law. As well, it encapsulates a constant and undeniable tension between the sacred and temporal worlds, which is manifested clearly in an examination of the interpretation or application of its sources – particularly within a contemporary context. Its name can be construed as

misleading, as to call it "Law" may seem an understatement. According to Noel Coulson, the *shari'ah* is "a comprehensive scheme of human behavior which derives from the one ultimate authority of the will of Allah; so that the dividing line between law and morality is by no means so clearly drawn as it is in Western societies generally."[1]

As Said Ramadan posits, "religion, as generally conceived, is a spiritual sphere of supra-human connotation that cannot be identified with "law", which is basically a secular concern."[2] Indeed, Islamic Law is a concept that is far more complex than a secular system of laws. It is a phenomenon that, in its classical intention, permeates all aspects of life and is more than the sum of all of its sources. Its religious character – in part illustrated by its focus on morality – is truly undeniable. According to Ahmad Bin Mohamed Ibrahim, the main purpose of the *shari'ah* is "to construct human life on the basis of *ma'rufat* (virtues)[3] and to cleanse it of *munkarat* (vices)."[4]

As Yvonne Yazbeck and Barbara Freyer Stowasser suggest, "the English term 'Islamic Law' serves as translation of both *shari'ah* ("the revealed, or

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[1] Coulson, Noel J., *Conflicts and Tensions in Islamic Jurisprudence* (Chicago, Illinois: The University of Chicago Press, 1969) 79.
[2] Ramadan, Said, *Islamic Law – It's Scope and Equity* (London, Great Britain: P R Macmillan Ltd, 1961) 15.
[3] The term *ma'rufat* denotes all conscience; conversely *munkarat* denotes all the sins and vices that have always been condemned by human nature as evil. The *shari'ah* gives a clear explanation of these virtues and vies and states the norms to which the individual and social behavior should conform.
[4] Ibrahim, Ahmad Bin Mohamed, *Sources and Development of Muslim Law* (Singapore, Malaysian Law Journal: Tak Seng Press, 1965) 6.

canonical, law of Islam") and *fiqh* ("jurisprudence in Islam")."[5] Hence, it encompasses a much broader scope of meanings "than those attributed to "law" in the modern Western context in that it includes such matters as worship, personal morality, family relations and public welfare."[6] For this reason, it has been described as both a jurists' law and a divine law – a contradiction that Noel Coulson examines in order to reveal the basic tension between religious principles, which have been provided by divine revelation, and the human reasoning of jurists, which served to develop the concept and meaning of Islamic Law. As Coulson suggests:

> The comprehensive system of personal and public behavior which constitutes the Islamic religious law is known as the *shari'ah*. The goal of Muslim jurisprudence was to reach an understanding (*fiqh*) of the *shari'ah*. Its primary task, therefore, was to formulate the principles or sources (*usul*) from which such an understanding might be achieved. Consequently, Muslim legal theory is known as *usul al-fiqh*, or "the sources of understanding."[7]

Accordingly, the entire process by which Islamic Law developed, since the time of the Prophet until today, has been one that could be described as "a speculative effort of the human intellect."[8] This suggests that it is imperative to consider not only the scriptural sources of Islamic Law (i.e. the Qur'an and Hadith) but also the impact of human reason, as well as the socio-historical context of the use of human reason, as evidenced by the use of *ijma* (community consensus) as the third source of law. Indeed, Ahmad Bin Mohamed Ibrahim's theory on the development process indicates the importance of the role of humanity in the creation of *shari'ah*.

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[5] Yazbeck, Yvonne and Freyer Stowasser, Barbara, *Islamic Law and the Challenges of Modernity* (Lanham, Maryland: Rowman & Littlefield Publishers, Inc, 2004) 4.
[6] Ibid 4.
[7] Coulson, Noel J, *Conflicts and Tensions in Islamic Jurisprudence* (Chicago, Illinois: The University of Chicago Press, 1969) 3.
[8] Ibid 23.

> The fundamentals of Islamic jurisprudence were derived from the Qur'an and the Sunnah, but these were elaborated and developed, thereby creating an integrating principle which made of an agglomerate of varied elements a unique phenomenon. During the first two centuries of Islam the Muslim jurists created a central core of ideas and institutions which went beyond the contents and implications of the Qur'an and the practice of the Prophet, but which the Muslims considered and have continued to consider specifically Islamic.[9]

This human influence on divine principles has contributed to one of the major issues associated with the application of the *shari'ah* within the contemporary Muslim world: "the failure to distinguish between what is laid down by God and the Holy Qur'an and the Sunnah of the Prophet on the one hand, and the elaborations on their basis by Muslim jurists on the other."[10] It is this point that makes Islamic Law an important concept to understand within the context of the current clash between those who advocate a traditional or fundamentalist interpretation of Islam and those who support a modern interpretation and application. As Hamid R. Kusha indicates in his case study of women and the criminal justice system of Iran, "the study of *shari'ah*, as complex as it is, [provides] much needed background for understanding the turmoil that many Islamic countries face as they enter the twenty-first century."[11] Indeed, as Jan Goodwin indicates:

> In the West, we regard the separation of church and state as an imperative progressive goal. In the Muslim world, however, Islam is a total way of life that affects all aspects of being: public, private and spiritual. And because of the blurring of religion and governance, the increasingly militant Islamic

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[9] Ibrahim, Ahmad Bin Mohamed, *Sources and Development of Muslim Law* (Singapore, Malaysian Law Journal: Tak Seng Press, 1965) 107.
[10] Ibid 108.
[11] Kusha, Hamid R, *The Sacred Law of Islam, A Case Study of Women's Treatment in the Islamic Republic of Iran's Criminal Justice System* (Aldershot, England: Dartmouth Publishing Company, 2002) 5.

> revivalist movement is dictating how people should think, behave, dress and live; it is also increasingly influencing how nations are governed.[12]

To add to the complexity and uniqueness of the *shari'ah* is the fact that the seventh century retains ideological significance because the life of the Prophet Mohammad and the society that he created in pre-Islamic Arabia still are looked to as models of morality and social justice to which contemporary Muslims should adhere. As H.A.R. Gibb suggests, Islamic Law, according to Muslim scholars, "was the practical aspect of the religious and social doctrine preached by Mohammed ... for Muslims its proof and texts were to be found in the Qur'an and Prophetic Tradition."[13] Yet, since the life of the Prophet, the world has changed unthinkably in terms of both social progress and technological advancement. This evolution strains the application of the law in its classical form and, whereas some areas of law have been replaced completely by Western concepts and practices, the *shari'ah* has maintained a strong hold on family law – the sphere that most directly affects the lives of women – throughout the Muslim world. The tension felt between ideal and actual, past and present is tangible. The dualism of the law is strained. Its religious function is touted by traditionalist and Islamists, who strive to uphold what they consider to be unchangeable and divinely revealed principles to which human behavior must adhere. Whereas, the human reason that was behind the development of Islamic jurisprudence is questioned by modernists and reformists, who believe that the principles of the fundamental sources, divine as they may be, must now be

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[12] Goodwin, Jan, *Price of Honor – Muslim Women Lift the Veil of Silence on the Islamic World* (Boston and New York: Little, Brown & Company, 1994) 7.
[13] Gibb, HAR, *Mohammedanism* (New York; New American Library, 1955) 73.

applied through contemporary human reason to a modern world with new and different social realities and relationships. Thus it is imperative to look to the fundamental texts, the Qur'an and the Hadith, in order to understand clearly the ideals of Islamic society and to consider how these ideals are now being applied by Muslim governments within the context of a contemporary world.

The Qur'an

The Qur'an is believed to be the direct word of God, representing both "the absolute authority wherefrom springs the very conception of legality and every legal obligation ... [and] the first and everlasting miracle of Muhammad's Prophethood."[14] It is a compilation of the divine messages that were revealed to Muhammad during his lifetime by the angel Gabriel and it was compiled later under Uthman, the Third Caliph of the Muslim world. For Muslims, it is "the source of all guidance for correct Islamic living,"[15] providing an ideal social paradigm to which all Muslims should strive to adhere. This position is affirmed by Fazlur Rahman who posits that "there is no doubt that a central aim of the Qur'an is to establish a viable social order on earth that will be just and ethically based."[16] Certainly, the creation of Islamic society improved the status of many compared to that of pre-Islamic Arabia:

> Prior to Islam, unless women, destitute youths, the mentally deranged and slaves were linked to the powerful persons, families or kinship groups, they

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[14] Ramadan, Said, *Islamic Law – It's Scope and Equity* (London, Great Britain: P.R. Macmillan Ltd, 1961) 32-33.
[15] Qureshi, Saleem, "The Muslim Family: The Scriptural Framework," *Muslim Families in North America*, ed. Earle H. Waugh, Sharon McIrvin Abu-Laban, Regular Burckhardt Qureshi (Edmonton: University of Alberta Press, 1991) 32.
[16] Rahman, Fazlur, *Major Themes of the Qur'an* (Minneapolis: Bibliotheca Islamica, 1980) 37.

> could face arbitrary treatment, especially in cases in which they were involved in law-infracting behaviors or crimes.[17]

The Qur'an served as a facilitator of social change and structure in that it included most of the basic notions and values that underpin the development of civilized society, including "compassion for the weaker members of society, fairness and good faith in commercial dealings, and the incorruptibility in the administration of justice."[18] These and other notions were "enjoined as desirable norms of behavior without being translated into any legal structures of rights and duties."[19] The changes that ensued were a direct result of both the principles contained within the Qur'an and the fact that the Prophet, himself, lived within the community as the prime example of ethical and responsible behavior. By means of specific reforms, the Qur'an was used successfully to improve the living conditions of "the weaker segments of the community: the poor, the orphans, women, slaves, [and] those chronically in debt."[20]

> [T]he Qur'an called attention to what is characterized as the "vile" nature of pre-Islamic abusive traditions among bedouin Arabs, and especially to the manner in which such traditions dealt with the weakest segments of society, whether orphans, slaves, women, the poor, or even the mentally deranged... The Qur'an can ... be looked on as a blueprint for a moral and just way of life in a sedentary setting. It has been customary ... to characterize pre-Islamic life among bedouin Arabs as one based on "ignorance," of the period of *Jahiliyah*.[21]

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[17] Kusha, Hamid R, *The Sacred Law of Islam – A Case Study of Women's Treatment in the Islamic Republic of Iran's Criminal Justice System* (Aldershot, England: Dartmouth Publishing Company, 2002) 34.
[18] Coulson, N J, *A History of Islamic Law* (George Square, Edinburgh: Edinburgh UP, 1964) 11.
[19] Ibid 11.
[20] Rahman 47.
[21] Kusha, Hamid R, *The Sacred Law of Islam – A Case Study of Women's Treatment in the Islamic Republic of Iran's Criminal Justice System* (Aldershot, England: Dartmouth Publishing Company, 2002) 35.

However, one should not confuse the social changes that were made in seventh century Arabia as constituting static rules by which any given community should live in order to comply with Islamic principles. As Ahmad Bin Mohamed Ibrahim suggests, "the aim of Muhammad as Prophet was not to create a new system of law; it was to teach men how to act, what to do and what to avoid in order to gain approval on the day of Judgment and to enter paradise."[22] One must bear in mind also social and historical context. The changes introduced by Muhammad were done to liberalize certain features of Arabian society; today, the same reforms would drastically turn back the hands of time and would result in dramatic blows to the rights of certain members of the contemporary Islamic world. This confusion is perhaps best highlighted in the realm of law. Often proponents of a more traditional interpretation of Islamic law look to the seventh century and to the specific societal conditions of that time and attempt to argue that those same practices must be upheld with the law as revealed by the Qur'an and the Hadith.

> In understanding the Qur'an's social reforms, however, [one] will go fundamentally wrong unless [one] distinguishes legal enactments and moral injunctions. Only by so distinguishing can [one] not only understand the true orientation of the Qur'anic teaching but also solve the knotty problems with regard, for example, to women's reform. This is where the Muslim legal tradition, which essentially regarded the Qur'an as a lawbook and not *the religious source of law*, went so palpably wrong.[23]

The implementation of ethical behavior discussed and encouraged by the Qur'an did serve to provide a framework of sorts for the creation of the first Islamic society, but it was never intended to provide for an entire way of life (i.e. the provision of a

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[22] Ibrahim, Ahmad Bin Mohamed, *Sources and Development of Muslim Law* (Singapore, Malaysian Law Journal: Tak Seng Press, 1965) 41.
[23] Rahman 47.

political system, the establishment of a legal code, and the like). The Qur'an does provide fundamental principles to which the Islamic community was intended to adhere but in no ways can these be utilized, as in the Golden Age of Islam, to serve directly as a political framework with which to establish an Islamic state. The same problem applies to the arena of law. The Qur'an cannot be understood as a book of laws.

> The injunctions in the Qur'an which deal with the law are few in number. Regarding family law they are laid down in 70 injunctions; civil law in another 70; penal law in 30; jurisdiction and procedure in 13; and economics and financial order in 10. Such enumeration however can only be approximate. The legal bearing of some injunctions is disputable, whereas [that] of others simultaneously applies to more than one sphere of law.[24]

In fact, according to David Pearl, "the essential feature of the Qur'an … is that it is not a code of law."[25] Rather than being even an easy reference for legal studies, Said Ramadan suggests that the Qur'an is "basically a book of religious guidance … more particularly an appeal to faith and the human soul rather than a classification of legal prescriptions."[26] Yet, this religious book of morals and principles has remained the primary and undisputed source of the *shari'a*, seconded only by the recorded traditions of the Prophet. Noel Coulson propounds that the legal material that is, in fact, contained within the Qur'an and the Hadith is a "collection of piecemeal rulings on particular issues scattered over a wide variety of different topics; far from representing a substantial corpus juris, it hardly comprises the bare skeleton of a

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[24] Ibrahim, Ahmad bin Mohamed "Sources and Development of Muslim Law," *Malaysian Law Journal* (1965) 11.
[25] Pearl, David, *A Textbook on Islamic Law* (London, Great Britain: Croom Helm Ltd., 1979) 1.
[26] Ramadan, Said, *Islamic Law, It's Scope and Equity* (London, Great Britain: P.R. Macmillan Ltd, 1961) 33.

legal system."[27] The laws governing public and private actions of Muslims today are not the same laws by which the Muslim community lived during the time of the Prophet.

> In propounding his message, the Prophet plainly wished to break away from pre-Islamic values and institutions, but only insofar as he needed to establish once and for all the fundaments of the new religion. Having been pragmatic, he could not have done away with all the social practices and institutions that prevailed in his time.[28]

The pragmatism of the Prophet and his *ad hoc* approach of dealing with issues within his community certainly was not characterized by a formal legal code. Certainly, the very character of the Qur'an is "such that it could not possibly be a comprehensive code. Legal precepts were revealed to Muhammad to meet certain contingencies in a pragmatic and empirical fashion."[29] Accordingly, the community looked to the *shari'a* to "confront the daily realities of the increasingly numerous and culturally diverse members of the *umma*."[30] According to Coulson, Muhammad was "the 'judge-supreme' responsible for the interpretation of the revelations in the Qur'an to meet the particular problems as and when they arose."[31] When the Prophet was alive, this sort of pragmatic decision-making sufficed, as the community was small enough that all matters could be brought directly to the Prophet for arbitration. After the death of Muhammad, however, this was no longer an option. Gradually, other specific individuals became recognized as specialists of law and different schools of

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[27] Coulson, Noel J, *Conflict and Tensions in Islamic Jurisprudence* (Chicago: Chicago UP, 1969) 4.
[28] Hallaq, Wael B, *A History of Islamic Legal Theories* (Cambridge, United Kingdom: Cambridge UP, 1997) 3.
[29] Pearl, David, *A Textbook on Islamic Law* (London, Great Britain: Croom Helm Ltd, 1979) 1.
[30] Mernissi, Fatima, *Beyond the Veil: Male-Female Dynamics in Modern Muslim Society* (Indianapolis: Indianapolis UP, 1987) 21.
[31] Coulson, N.J., *A History of Islamic Law* (Edinburgh, 1964).

Islamic jurisprudence evolved. This development resulted in some issues being removed from the scope of the religious law. According to Joseph Schacht, two kinds of legal matter then could be differentiated within the Islamic community.

> First, subject matter upon which the *shari'a* failed to maintain its hold: penal law, taxation, constitutional law, law of war, and law of contracts and obligations. Second, subject matter upon which the hold of the *shari'a* was uncontested for centuries and in some areas is uncontested even today: purely religious duties, family law (marriage, divorce, maintenance), law of inheritance, and law of endowments for religious institutions.[32]

It is the latter that is of particular relevance to the status of women.

> One of Muhammad's major aims was to alleviate the deprived role of the Arabian woman, and thus much of the legal material to be found in the Qur'anic verses concerns the very real attempt to enhance the legal position of the woman. In customary law, the woman was treated as an 'object of sale'; she was fully exploited by her father, and she could be sold in marriage to the highest bidder. The husband was entitled to terminate the contract of marriage on any occasion and for any whim. Qur'anic legislation completely transformed this position.[33]

Also important to consider are the general opinions of a community in regards to social roles and traditional behaviour of women in various spheres of life, which will be examined further at a later point in this chapter, and again this stems back to the lifetime of the Prophet.

The Hadith

The second most important component to the scriptural framework of Islamic law is the Hadith, the recorded traditions of the Prophet. During his lifetime, the goal of the Prophet was to reveal and serve as a living example of the teachings of

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[32] Mernissi 22.
[33] Pearl, David, *A Textbook on Islamic Law* (London, Great Britain: Croom Helm Ltd., 1979) 2-3.

Islam. Initially, these traditions were transmitted only in oral form, according to Arab tradition.

> The word *sunna* (pl. *sunan*) was used to name the Prophet's "custom," his words, deeds, and habitual practices. This word was well known in Arabic and denoted a pattern of behaviour that people follow. It is then, originally, a general term. But when applied to Muhammad, it became a special term that denoted the category of exemplary words, deeds, and gestures that were destined to be authoritative in the life of the *umma*. The *sunna* is an ideal as well as a memory, and even more it is an ideal for Muslims and handed down by example and personal teaching.[34]

The term *hadith* came into use only when these traditions were written down, when transmission took literary form. The Arabic word, *hadith*, has root meanings of "taking place, occurring, coming to pass" and came to be a "report" of the traditions of Muhammad and his Companions as passed down through the generations. The compilation and developmental process of the Hadith remains controversial. Several different collections of recorded traditions were put together. Over time, two in particular were recognized as possessing authoritative superiority; these were the *Sahis al-Bukari* and the *Sahis al-Muslim*. It is the *Bukari* collection from which examples are garnered in this paper. Important to note is that Shiites do not accept *hadith* from any source other than that from Muhammad's family; that is to say that only those traditions transmitted by Ali and his descendants are considered to be valid.

In the early days of Islam, the recording of the actions or sayings of the Prophet was discouraged due to a fear that the supreme authority of the Qur'an might be impugned. The traditions of the Prophet came to be regarded as indirect

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[34] Denny, Frederick Mathewson, *An Introduction to Islam*, 2nd ed. (New York: MacMillan, 1994) 32.

revelation and together with the Qur'an came to form the foundation of the *shari'a*. Indeed, with the exception of these two scriptural sources, other sources of Islamic jurisprudence, *ijma* (consensus) and *qiyas* (analogy), have been "a matter of controversy as to [their] validity and definition."[35] The situation was markedly different during the lifetime of the Prophet, as Muhammad, himself, was able to fulfill society's need for guidance.

> In the lifetime of the Prophet [the Sunna] was evidenced by the living example of the Prophet and after his death it was evidenced by the knowledge of the Companions of the actions of the Prophet and the example of the Companions themselves who strove to model their lives on the life of the Prophet.[36]

Due to the fact that the example of the Prophet had such great impact on both the behavior of individual Muslims and the shaping of the Islamic community in entirety, later generations attempted to verify what the Prophet is alleged to have done or believed.

> Actual adherence, devotion, and memory had been strong guarantees for the authority and authenticity of the Sunna.[37]

Gradually, a living tradition evolved. Over time, and as Islam spread further, it became necessary to revisit the foundations of the *sunna*, the very actions and sayings of the Prophet. Political rulers and judges made use of these traditions. The practices of the living *sunna* had expanded and spread throughout several different regions of the Muslim empire. As a result of this growth and as differences in law

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[35] Ramadan, Said, *Islamic Law, Its Scope and Equity* (London, Great Britain: P R Macmillan Ltd, 1961) 23.
[36] Hallaq, Wael B, *Authoritym Continuity, and Change in Islamic Law* (Cambridge: Cambridge UP, 2001) 54.
[37] Tabatabai, Allamah Sayyid MH, *The Qur'an in Islam* (London: Zahra Publications, 1987) 102.

and legal practices widened, the Hadith began to develop into a formal discipline. Over the course of time, a separate science of Hadith was built up in which both chains of authorities could be traced back to the Prophet and the biographical data of narrators could be investigated and classified. The end result of this endeavor was the compilation of every recorded item of the Hadith and its placement with respect to the status of its authenticity. To complicate the issue further, not all traditions were considered to be of equal bearing. Also, there exist some that are believed to have been completely fictional. Essentially, there exists a lack of clarity on the issue of the Hadith and its role within Islamic law. There are some questions that seem to stem naturally within this discussion which include a consideration of the role of the Hadith within the framework of Islamic law, the problem of validity, and the question of inclusion.

The issue of validity of the Hadith is very contentious. As the science of Hadith evolved, each individual recorded tradition came to possess two distinctive features.

> The first is the opening citation of the persons who transmitted it, called the *isnad*, a documentation process meaning 'prop, support, backing.' It is the chain of ascriptions by which a report is authenticated. Each link is a person who has been involved in the transmission. The second and main part of the *hadith* is called the *matn*, the 'main text.'[38]

Among other things, judgments were based on close scrutiny of the *isnad*. It was possible to invent a fictitious yet plausibly sounding tradition; thus the Muslim community came to look to the chain of narration as the crucial index of authenticity. This concerted effort to sift through the traditions for valid direction attests to the

[38] Denny 160-161.

importance held by the Muslim populace to carry on Islamic doctrine and observance from generation to generation. Along this vein, *'ilm-al-rijal*, the "science of men" was developed. This particular sub-discipline entailed the collection of any available information pertaining to individuals named in the *isnads* of the ever-expanding collection of Hadith. Personal characteristics were evaluated. These included but were not limited to considerations of intelligence, observed piety, honesty, and quality of memory. Additional information included biographical data and historical facts of noted individuals (i.e. habits, travels, or contacts). Evidently, *'ilm-al-rijal* became a very complex issue. There came to be four classes or identified groups of traditions according to the nature of proof and completion of the chain and transmission: *mutawatir* (continuous), *mashhur* (widespread), *ahad* (isolated), and *mursal* (disconnected).[39] Naturally the creation of a hierarchical system of classification encouraged various authorities to undertake a comprehensive sorting of all known traditions. For instance, Bukari is said to have traversed the Muslim world extensively in search of a complete collection of Hadith and associated information. He is said to have gathered roughly 600,000 individual traditions. Many were sifted out as duplicates and others were discarded due to potential invalidity. Bukari was able to whittle his collection down to 9,082 Hadith with differing *isnads*. When one factors in repetition of the *matns*, this sum again was reduced to a total of 2,602 accepted and authentically recognized traditions.

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[39] Ibrahim, Ahmad Bin Mohamed, *Sources and Development of Islamic Law* (Singapore, Malaysian Law Journal: Tak Seng Press, 1965) 11-15.

Next one must consider the role played by the Hadith in the development and practice of Islamic law and jurisprudence. In both classical times and today, Islamic jurists credit the Hadith as serving two important functions within Islamic society. First, the Hadith help the Islamic community to understand the meaning and application of the Qur'anic text. One can look to the recorded traditions of Muhammad to understand more clearly the intended principles of the scripture. Further, the recorded traditions provide details to general rules, apply rules when they appear general, provide exception to such application, and define them when they contain the potential of more than one interpretation. Essentially, it is theorized that in this regard, one should turn to the Hadith as a sort of supplemental tool to gain a more clear understanding of the divine path outlined for Islamic society. The recorded traditions contain Muhammad's religious vision, his personal experiences and behavior, and the structure of the society (pre-Islamic Arabia) against which he was reacting; all of this contributed to the form assumed by the first Islamic society. Second, the Hadith serves to lay down rules of conduct for some matters not dealt with explicitly within the revelations of the Qur'an. Thus, if there is a lack of clarity on some matter, if there is no point of reference for an issue within the Qur'anic text, it is acceptable then to turn to the traditions of the Prophet for guidance. These functions bring forward an interesting point – that "the relative position of each should have made the Qur'an primary, but in reality, Hadith became a privileged source, since it fleshed out the sometimes elliptical verses of the Qur'an and gave a more concrete interpretation of the revelations."[40]

[40] Waugh, Earle H, Baha Abu-Laban and Regula B Qureshi, edition, *The Muslim Community in North*

Bearing the two generally accepted functions of the Hadith in mind, it remains true that even the Qur'an and the Hadith, together, cannot provide for a complete contemporary society, particularly with respect to the realm of law.

> The Qur'an and the [Hadith] are not, as it is often said, the basis of Islamic legal speculation, but only its sources. The real foundation is to be sought in the attitude of mind which determined the methods of utilizing these sources.[41]

That said, it seems that the advocates of any social or legal changes within society still must legitimize their actions by turning to individual traditions of the Prophet or selected verses of the Qur'an in order to win the necessary political favor. As Said Ramadan reminds us:

> We should not lose sight of the simple fact that Islam, in the sense of binding law, was defined forever by the Qur'an and Sunnah, and any new claim to binding authority in the name of Islam has to be authenticated thereby.[42]

Therefore, in order to best determine how women have been affected by the application and interpretation of Islamic Law, I will examine these fundamental sources – the Qur'an and the Hadith – and discuss three distinct realms of a woman's life according to them. I will discuss the role of the woman as a believer, her role within her family and her role within society.

Woman as Believer

The omnipresence and all-encompassing authority of God is a theme that is stressed greatly throughout both the Qur'an and Hadith. Along with this, the necessity of belief of all individual Muslims is illustrated. Within the social

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America (Edmonton, Alberta: University of Alberta Press, 1983) 15.

[41] Gibb, H.A.R., *Mohammedanism* (New York: New American Library, 1955) 73.

[42] Ramadan, Said, *Islamic Law, Its Scope and Equity* (London, Great Britain: PR Macmillan Ltd, 1961) 27.

paradigm created by the stories within the Qur'an and the Hadith, belief is fundamental and "the ultimate sanction visualized for the infringement of the [scriptural] provisions is always the blessing or wrath of God."[43] There is an 'either / or' scenario clearly put forward by the Qur'an with respect to religious belief: either a Muslim will believe, act accordingly and, subsequently, find a place in Paradise after life, or he or she will disbelieve, act accordingly and, subsequently, secure for him/herself a position in Hell. Many verses within the Qur'an portray this causal relationship between behavior during life and resulting status in the afterlife:

> [W]hoso earns evil, and is encompassed by/ his transgression – those are the inhabitants of the Fire;/ there they shall dwell forever./ And those that believe, and do deeds of/ righteousness – those are the inhabitants of Paradise;/ there they shall dwell forever.
> (II: 10)

> Those are God's bounds. Whoso obeys God/ and His Messenger, He will admit him/ to gardens underneath which rivers flow,/ therein dwelling forever; that is/ the mighty triumph./ But whoso disobeys God, and His Messenger;/ and transgresses His bounds, him He will/ admit to a Fire, therein dwelling forever, and for him there awaits/ a humbling chastisement.
> (IV: 74)

> Surely this [Qur'an] guides to the way that is straightest/ and gives good tidings to the believers/ who do deeds of righteousness, that theirs/ shall be a great wage,/ and that those who do not believe in the world to come – we have prepared for them/ a painful chastisement.
> (XVII: 275)

This dichotomy of belief and disbelief, Paradise and Hell, begs the question of belief from a perspective of gender: Are female believers equal to male believers, and if so, how is this equality of belief calculated? The point of departure of such an examination is the spiritual creation of both men and women. According to the

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[43] Coulson, N J, *A History of Islamic Law* (George Square, Edinburgh: Edinburgh UP, 1964) 12.

Qur'an, both men and women are believed to have been created by God from the same substance, thereby suggesting that there exists no inherent basis of inequality between them on an individual level.

> We created man of an extraction/ of clay,/ then We set him, a drop, in a receptacle/ secure,/ then We created of the drop a clot,/ then We created of the clot a tissue/ then We created of the tissue bones/ then We garmented the bones in flesh;/ thereafter We produced him as another creature./
> (XXIII: 343)

> Mankind, fear your Lord, who created you/ of a single soul, and from it created/ its mate, and from the pair of them scattered/ abroad many men and women; and fear God/ by whom you demand one of another,/ and the wombs; surely God ever/ watches over you.
> (IV: 72)

> It is He who created you out of one living soul,/ and made of him his spouse/ that he might rest in her./
> (VII: 166)

It is clear, then, that in the beginning both men and women were made of the same material (clay) and from a single soul. Certainly, this lays a foundation for an argument for spiritual equality. The issue of the soul is one that recurs frequently within the Qur'an and it is framed in such as way as to illustrate the means by which a believer is judged by Allah: his or her soul and the effect of deeds and actions committed during one's life. According to Hamid R. Kusha, "it is common knowledge among Muslim laity and intellectuals alike that in the Qur'an's valuation system, a believer's worth in the eyes of Allah depends on that believer's piety, righteous deeds and fear of Allah and not on extraneous factors such as sex, gender,

race or class status."[44] Indeed, this notion is supported by the Qur'an, whose *suras* depict judgment by individual, genderless soul.

> Every soul earns only to its own account;/ no soul laden bears the load of another./ Then to your Lord you shall return, and/ He will tell you of that whereon you/ were at variance./ It is He who has appointed you viceroys/ in the earth, and has raised some of you in rank above other, that He may try you/ in what He has given you.
> (VI: 142)

> The day that every soul shall come disputing in its own behalf; and every soul shall be paid in full/ for what is wrought, and they shall not be wronged./
> (XVI: 271)

Interestingly, the issue of spiritual equality is reinforced also by excerpts from the Qur'an that are addressed specifically to male and female believers, illustrating that, to consider women as believers and as Muslims who had equal access to Paradise as their male counterparts, was a conscious decision, as evidenced by the scriptural sources of Islam. Thus, when people of virtue are mentioned, the Qur'an mentions both men and women, so that each is considered in his or her own right.

> Men and women who have surrendered,/ believing men and believing women,/ obedient men and obedient women,/ truthful men and truthful women,/ enduring men and enduring women,/ humble men and humble women,/ men and women who give in charity,/ men who fast and women who fast,/ men and women who guard their private parts,/ men and women who remember God oft -/ for them God has prepared forgiveness/ and a mighty wage./
> (XXXIII: 431)

> Whosoever does an evil deed shall be/ recompensed only with the like of it,/ but whosoever does a righteous deed,/ be it male or female, believing – those shall/ enter Paradise, therein provided/ without reckoning./
> (XL: 485)

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[44] Kusha, Hamid R, *The Sacred Law of Islam – A Case Study of Women's Treatment in the Islamic Republic of Iran's Criminal Justice System* (Aldershot England: Dartmouth Publishing Company, 2002) 85.

With the revelation of these verses, women could not be ignored as Muslims within the Prophet's society and beyond. Further, women were provided with religious rights and responsibilities as were their male counterparts. This raises the issue of the temporal versus spiritual treatment of women according to the scriptural sources of Islamic Law. It is one thing to advocate spiritual equality for women and men within a religious sphere of consideration; it is another altogether to consider how women were able to fulfill their relationships with God within Muslim society.

> If man and woman are created from a single soul, then, in the eyes of Allah, they are spiritually equal. The problem is that this absolutist eschatological equality is not matched by a corresponding temporal equality in the Qur'an [...]. Instead, the Qur'an stresses fairness and equality in dealing with orphans, women, slaves and the sick and destitute who comprise the disenfranchised of society according to both Western and Muslim commentators of the Qur'an, a premise that is expressed in Shari'a Law.[45]

One example of where the question of spiritual equality meets temporal equality is that of a woman's ability to leave the home to worship. This moves a woman's personal, spiritual relationship with God into the public space of the mosque – a place where she would inevitably interact with men. Though the Qur'an clearly stresses the spiritual equality of women, on this type of pragmatic religious consideration it remains vague on actual practice, making the Hadith the more accurate reference. Certainly, some verses of the Qur'an could be identified generally to support a woman's ability to venture out publicly to worship:

> God is the protector of the believers;/ He brings them forth from the shadows/ into the light.
> (II: 37)

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[45] Kusha, Hamid R, *The Sacred Law of Islam – A Case Study of Women's Treatment in the Islamic Republic of Iran's Criminal Justice System* (Aldershot, England: Dartmouth Publishing Company, 2002) 88.

> And whosoever does deeds of righteousness,/ be it male or female, believing/ they shall enter Paradise, and not be wronged/ a single date-spot.
> (IV: 91)

The Hadith is far more specific, explicitly suggesting that, at the time of the Prophet, not only were women allowed to leave their homes in order to pray or to worship, they did not require the permission of their male guardians to do so, as it was the will of the Prophet that that they may attend the mosque to worship. It was considered a matter between God and believer, rather than one between man and woman.

> Narrated Ibn 'Umar: The Prophet said, "If your women ask permission to go to the mosque at night, allow them."
> (Hadith 1.844: 456)[46]

> Narrated Salim bin Abdullah: My father said, "The Prophet said, 'If the wife of any one of you asks permission (to go to the mosque) do not forbid her.'"
> (Hadith 1.832: 459)

The Hadith tells us that, even when men were displeased at the thoughts of their wives going out to worship, they had no choice but to honor their religious right to do so.

> Narrated Ibn 'Umar: One of the wives of 'Umar (bin Al-Khattab) used to offer the Fajr and the 'Isha prayer in congregation in the Mosque. She was asked why she had come out for the prayer as she knew that 'Umar disliked it, and he had great ghaira (self-respect). She replied, "What prevents him from stopping me from this act?" The other replied, "The statement of Allah's Apostle: 'Do not stop Allah's women-slave from going to Allah's Mosques', prevents him."
> (Hadith 2.23: 10)

It seems that in regard to religious duties, Islam recognizes no distinction between men and women. In many respects, their obligations to God and the community are

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[46] All references to the Hadith are from: Myhammad Muhsin Khan, *The Translations of the Meanings of Sahih Al-Bukhari* (Chicago: Kazi, 1977).

similar, thus their position in the eyes of God cannot be dissimilar. This case is strengthened by the fact that a woman's right to religious participation in her own right is emphasized throughout the collection of individual traditions of the Prophet. It seems that the general consensus of Muslims and academics alike is that "[r]eligiously speaking, men and women have absolute parity."[47]

Not only were women given full leave to fulfill their religious obligation, they appear also to have been active participants in prayer and alms-giving on a more regular basis. This is illustrated by a tradition narrated by Ibn Abbas:

> Once Allah's Apostle came out while Bilal was accompanying him. He went towards the women thinking that they had not heard him (i.e. his sermon). So he preached to them and ordered them to pay alms. (Hearing that) the women started giving alms; some donated their earrings, some gave their rings and Bilal was collecting them in the corner of his garment.
> (Hadith 1.97-B: 78)

There were even provisions made for women who were menstruating, a state that was considered to be ritually impure. As told by Aisha:

> We set out with the Prophet for Hajj and when we reached Sarif I got my menses. When the Prophet came to me, I was weeping. He asked, "Why are you weeping?" I said, "I wish [that] I had not performed Hajj this year." He asked "May it be that you got your menses?" I replied, "Yes." He then said, "This is the thing which Allah has ordained for the daughters of Adam. So do what all the pilgrims do except that you do not perform the Tawaf round the Ka'ba till you are clean." (Hadith 1.302: 182)

Thus, it appears that women are equal to men in their role as believers. They are considered in their own right, included in the Qur'anic verses, and provided with a plan with which to continue the fulfillment of their religious obligations during times that biological differences do set them apart. If the scriptural foundation is present to

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[47] Rahman 49.

support one kind of equality between men and women, can it not be used to support women's rights in other arenas? Certainly this is the sort of question posed by reformists throughout the contemporary Muslim world. It follows logically that if men and women have the same religious rights and responsibilities, they should be treated equally in other arenas as well, due to the fact that religion is so pervasive throughout the whole of Islamic society.

> [I]f men and woman have equal duties in regard to prayers, the payment of poor tax and, most of all, in the enjoying of good and the forbidding of evil in all their social, economic and political forms, it is necessary that they should have equal educational opportunities.[48]

According to the basic text of Islam, all duties in life are religious duties; thus, could it not be argued that, in order to best enjoy the good in society – in the social, economic and political arenas – a woman would need a level of education equal to that of a man? Modernists do propound that, since women and men are equal in the eyes of God and one cannot separate religion from politics or societal relations, women should be looked to as having equal rights in all of these other fields.

Woman in the Family

Traditionally, the world of Islamic women has been one lived in the private, not public sphere. Hence it is within the family unit that she plays her main role. This role is an important one, as the family is regarded as being the building block of society.

> A stable family life is necessary not only in the interests of society, not only for the happiness and moral development of the husband and the wife, but also for the proper growth and development of future generations.[49]

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[48] Siddiqi, Mohammad Mazheruddin, *Women in Islam* (Lahore: Institute of Islamic Culture, 1975) 24.
[49] Siddiqi 63.

It is from this belief in the necessity of family life that the relationship between husband and wife came to be one of complementary and mutual rights and obligations. Unlike Western perspectives, Islam has based its system of rights and responsibilities "not on the vague and abstract conception of [gender] equality ... qualified by actual biological sex differences,"[50] but on the need to create and maintain a stable society. Contrary to common belief, there is no verse in the Qur'an or individual tradition of the Prophet that states that the female gender is inferior to its male counterpart. Rather, what is said is that the two are different and should be treated as such. Thus, a woman and a man together make one complete unit; each spouse is intended to complement the other, thereby creating stability within the Islamic family unit and, by extension, within society as a whole.

> To God belongs the Kingdom of the heavens and the earth;/ He creates what He will; He gives to whom He will females,/ and He gives to whom He will males/ or He couplдes them, both males and females;/ and He makes whom He will barren./ Surely He is All-Knowing, All-powerful./
> (XLII: 504)

This notion of complimentary rights and responsibilities is reinforced by the Hadith.

> Narrated Ibn 'Umar: I heard Allah's Apostle saying, "All of you are Guardians." [...] 'All of you are guardians and responsible for your wards and the things under your care. The Imam (i.e. ruler) is the guardian of his subjects and is responsible for them and a man is the guardian of his family and is responsible for them. A woman is the guardian of her husband's house and is responsible for it. A servant is the guardian of his master's belongings and is responsible for them.' [...]
> (Hadith 2.18: 8)

> Narrated 'Abdullah: Allah's Apostle said, "Everyone of you is a guardian and is responsible for his charges. The ruler who has authority over people, is a guardian and is responsible for them, a man is a guardian of his family and is

[50] Siddiqi 63.

> responsible for them; a woman is a guardian of her husband's house and children and is responsible for them; a slave ('Abd) is a guardian of his master's property and is responsible for it; so all of you are guardians and are responsible for your charges.
> (Hadith 3.730: 438)

Interestingly, it is normally the function of the Hadith to help the Islamic community to understand the meaning and application of the Qur'anic text by providing detail to general rules. In this discussion, however, it is the Qur'an that illustrates in detail the principle of complimentary rights and responsibilities, perhaps indicating how fundamental this notion truly is to the ideal Islamic society as envisioned by Muhammad.

> Mothers shall suckle their children two years/ completely, for such as desire to fulfill/ the sucking. It is for the father to provide them/ and clothe them honourably. No soul is charged/ save to its capacity; a mother shall not be pressed/ for her child, neither a father for his child./
> (II: 33)

This is because "the question of women's rights and obligations … appear to be the most controversial and most complex of all social problems."[51] Since the main objective of the *shari'a* is to create an ethical and just community on the basis of morality, "the media through which the law exercises its function are rights (*huquq*) and obligations (*wujub*)."[52] The most important relationship to regulate by means of rights and obligations is that of the family unit, as it is the foundation of Muslim society. This is interesting in that the concept of 'family' is not the same as is considered in the Western world; whereas the family unit can be treated as a whole

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[51] Syed, Mohammad Ali, *The Position of Women in Islam* (Albany, New York: State University of New York Press, 2004) 1.
[52] Ibrahim, Ahmad bin Mohamed, *Sources and Development of Islamic Law* (Singapore, Malaysian Law Journal: Tak Seng Press, 1965) 35.

in the West, it is dissected by Islamic Law to consider individual relationships between wife and husband, parent and child.

> The term "family" (*usra*, or *a'ila*) that appears prominently in today's legal literature signifies a brand-new concept in Muslim culture without precedent in Qur'an, Sunnah, or classical *fiqh*. Scholars of four classical Sunni schools did not combine legal rules concerning wives and husbands with rule regarding their offspring (*al-nasl*) into one category. Rather, *shari'a* law dealt with marriage, divorce, child custody, and the like under various separate titles. In addition, *shari'a* law defined the marriage contract as a fairly flexible instrument that the spouses could enter and exit within reasonable regulations. Both legal treatises and court records of the pre-modern period indicate that, in juridic understanding, the marriage contract represented but one example of a wider category of contractual law.[53]

Therefore it is important to consider several separate pieces that, together, comprise an accurate picture of the woman's role within the family unit.

One area of specific interest within the Islamic family unit is the social contract of marriage. Unlike other faiths, Islam views marriage as being a social contract, not a divine union.

> Since a contract cannot be made without the free consent of the two parties, under Islamic law, a marriage is a contract between two equal parties, that is, a man and a woman, neither of whom have special privileges over the other … The essential elements of the contract of Islamic marriage are the *ijab* (affirmation or declaration of the proposal) and the *qubul* (acceptance of the proposal). Usually the proposal is made by the would-be husband and the acceptance of the proposal is made by the would-be wife. Like every contract, Islamic marriage must have a consideration, and according to the Qur'an (4:4) this is *saduqa*, or dower, which is a free gift to the wife from the husband.[54]

Like any other contract, there is a desired outcome to this social union. As David Pearl outlines, there are a number of results of a valid marriage contract, including

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[53] Haddad, Yvonne Yazbeck and Barbara Freyer Stowasser, *Islamic Law and the Challenges of Modernity* (Lanham, Maryland: Rowman and Littlefield Publishers, Inc, 2004) 167.
[54] Syed, Mohammad Ali, *The Position of Women in Islam* (Albany, New York: State University of New York Press, 2004) 28.

that sexual intercourse and the procreation of children become legally mandated; the woman is paid a dower and, through this transaction, becomes a property owner in her own right; and, if there is divorce, the wife is entitled not only to a suitable period of time before final separation, and maintenance once the contract has been terminated.[55] In fact, from the very inception of Islam, women were provided with a [redacted] legal identity and full property rights. In order to safeguard the position of a married woman, Islam made it "legally obligatory on the husband to pay her a reasonable amount as dower."[56] This sum was hers with which to do what she wished. In matters of divorce and maintenance, Islam provided a framework of specific rules in order to promote the fair and just treatment of wives by husbands. These provisions, and others like them, suggest that it was never the intention of Islam that a woman should be considered to be inferior to a man. In fact, the Qur'an supports a basis of equality between man and woman within marriage.

> Mankind, fear your Lord, who created you/ of a single soul, and from it created/ its mate, and from the pair of them scattered/ abroad many men and women. (IV: 72)[57]

Also important to note is the fact that the Prophet insisted that marriage joins equal parties. This equality between marriage partners, *kafah*, pertains to six main points, which include: tribe and family; religion; character; occupation; fortune; and

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[55] Pearl, David, *A Textbook on Islamic Law* (London, Great Britain: Croom Helm Ltd, 1979) 42-57.
[56] Siddiqi 67.
[57] All references to the Qur'an are from: Arthur J Arberry, trans, *The Koran: Interpreted* (Oxford: Oxford UP, 1998).

freedom.[58] With respect to religious equality, both the Qur'an and Hadith illustrate the importance of marriage being a union of two believers.

> Do not marry idolatresses, until/ they believe; a believing slavegirl/ is better than an idolatress, though/ you may admire her. And do not marry/ idolaters, until they believe. A believing/ slave is better than an idolater, though/ you may admire him.
> (II: 30-31)

> Narrated Abu Huraira: The Prophet said, "A woman is married for four things, i.e., her wealth, her family status, her beauty and her religion. So you should marry the religious woman (otherwise) you will be a loser."
> (Hadith 7.27: 18-19)

One part of the notion of marriage being a contract between equal partners is that each partner must come into the contract of his or her own free will. Unlike pre-Islamic Arabia, in which "the basic concept of marriage under some forms of customary law was that of a sale of the woman by her father, or other near male relative, who received ... [a] purchase price"[59] for her, Islam mandated that a woman have the right to refuse a marriage contract and that, once she did participate in a marriage contract, she herself would receive a dower in payment. Indeed, the Prophet's traditions indicate the ability of a woman to choose or to decline a marriage contract.

> Narrated Khansa' bint Khidam Al-Ansariya that he father gave her in marriage when she was a matron and she disliked the marriage. So she went to Allah's Apostle and he declared that marriage invalid.
> (Hadith 7.69: 52)

> Narrated Aisha: I asked the Prophet, "O Allah's Apostle! Should the women be asked for their consent to their marriage?" He said, "Yes." [...]
> (Hadith 9.79: 64)

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[58] Qureshi 38.
[59] Coulson, N J, *A History of Islamic Law* (George Square, Edinburgh: Edinburgh UP, 1964) 14.

It seems that Islam afforded woman a more favorable position with respect to the contract of marriage than did the customary laws that had governed the community prior to the Prophet.

Once a marriage contract is undertaken, the Qur'an states that there are clear obligations to be fulfilled on the part of both husband and wife, based mostly on what was considered the functional role of each during the inception of Islam. For example, the second *sura* of the Qur'an states:

> Women have/ such honourable rights as obligations, but/ their men have a degree above them; God is/ All-mighty, All-wise. (II:32)

Likewise, it is written in the fourth sura:

> Men are the managers of the affairs of women/ for that God has preferred in bounty/ one of them over another, and for that/ they have expended of their property. (IV:77)

It seems logical that this would have been the traditional way of life at the time that the Qur'an was revealed. Traditionally, women would not have filled the role of money-manager, nor would they have taken part in commerce or trade. But, the world has aged and societies and the roles that women fulfill within them have changed. Thus, the argument stands that literal interpretations cannot suffice as the answer to all of life's questions, particularly within contemporary times. It would be better to extract only the principles exhorted by the scripture and the traditions of the Prophet and to apply these to modern times, but this solution has proven to be the major point of contention, drawing the line between traditionalists and modernists. The obligations of husband and wife, according to the Qur'an and the Hadith, are mutual but not identical. Therefore, "the husband's responsibilities pertain to

providing for the wife and treating her kindly, while the wife is required to be submissive and obedient."[60] It is this sort of concept that fuels modernist and feminist fury today, as there are some verses of the Qur'an and traditions of the Prophet that are very contentious with respect to marital responsibilities and the power relationship within the marriage. For example, the Qur'an indicates to men that women are there to fulfill them as they wish:

> Your women are a tillage for you; so come/ unto your tillage as you wish [...] (II: 31)

Some of the traditions of the Prophet provide more detail about a husband's rights with respect to his wife.

> Narrated Abu Huraira: The Prophet said, "If a man invites his wife to sleep with him and she refuses to come to him, then the angels send their curses on her till morning."
> (Hadith 7.121: 93)

> Narrated Abu Huraira: The Prophet said, "If a woman spends the night deserting her husband's bed (does not sleep with him), then the angels send their curses on her till she comes back (to her husband)."
> (Hadith 7.122: 93)

Within the socio-historical context of the Prophet's community, indeed one of the main reasons for a marriage contract was to legalize sexual intercourse and not, as it is within Western society today, to formalize a union of romantic love. Bearing this in mind, it was likely viewed at that time as being less abhorrent than today for a wife to be threatened with a divine curse if she did not attend to her husband's sexual desires.

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[60] Qureshi 49.

As outlined in the Qur'an and Hadith, "[t]he power of the husband over the wife is only disciplinary and proprietary, and as part of that disciplinary power, a husband can inflict corporal chastisement"[61] in a few, specified circumstances, but this does not provide him with free reign to abuse or to treat her incorrectly on a general basis. This is evidenced by a number of traditions and verses. For instance, in a tradition narrated by Abdullah bin Zama, it is stated that:

> The Prophet said, "None of you should flog his wife as he flogs a slave." (Hadith 7.132: 100)

Also, according to Aisha:

> Regarding the explanation of the following verse:
> 'If a wife fears/ Cruelty or desertion/ On her husband's part.' (4:128)
> A man may dislike his wife and intend to divorce her, so she says to him, "I give up my rights, so do not divorce me." The above verse was revealed concerning such a case. (Hadith 3.630: 378)

This raises another important consideration within the marriage contract: kindness and just treatment. Islam encourages correct treatment of all, whether they are rich or poor, slave or woman.

> Marry the spouseless among you, and your/ slaves and handmaidens that are righteous;/ if they are poor, God will enrich them/ of His bounty; God is All-embracing,/ All-knowing./ And let those who find not the means to/ marry be abstinent till God enriches them/ of His bounty. Those your right hands own/ who seek emancipation, contract with/ them accordingly, if you know some good/ in them; and give then of the wealth of God/ that He has given you. And constrain not/ your slave-girls to prostitution, if they/ desire to live in chastity, that you may/ seek the chance goods of the present life./ Whosoever constrains them, surely God,/ after their being constrained, is All-forgiving,/ All-compassionate.
> (XXIV: 356)

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[61] Qureshi 50.

One of the Prophet's traditions, narrated by Abu Musa, furthers this principle by suggesting that a man who educates and marries a female slave, treating her correctly and compassionately, will be rewarded by God.

> Allah's Apostle said, "He who has a slave-girl and educates and treats her nicely and then manumits and marries her, will get a double reward.
> (Hadith 3.720: 433)

In accordance with the notion of rights and responsibilities, Islam also encourages kind and ethical treatment among spouses.

> [...] Consort with them (women) honorably; or if/ you are adverse to a them, it is possible/ you may be averse to a thing, and God set/ in it much good./
> (IV: 75)

Likewise the Hadith extols the virtues of kindness and just treatment:

> Narrated Abu Huraira: Allah's Apostle said, "Treat women nicely, for a woman is created from a rib, and the most curved portion of the rib is the upper portion,[62] so, if you should try to straighten it, it will break, but if you leave it as it is, it will remain crooked. So treat women nicely.
> (Hadith 4.548: 346)

Thus, there appears to be no inherent or predisposed basis to support a notion of inequality with which to justify any suppression or maltreatment of women within the traditional Islamic marriage contract. There is, however, a textual basis to further the notion that men and women possess different roles; in fact, through a scriptural framework, each is provided mutual yet different rights and responsibilities within the bond of marriage. This, perhaps, is the fuel that is used by traditionalists to ignite debates against the women's movement within the Muslim world.

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[62] N.B. The upper part of the rib may symbolize the woman's tongue. The breakage of the rib in case one tries to straighten it, stands for divorce which is the natural result of disagreement between wife and her husband. (Bukhari)

Marriage is vital not only for the spiritual and moral betterment of the community, but also as a means to promote societal stability. According to the Qur'an, marriage is the preferred social state for believing Muslims.

> God has appointed for you of yourselves wives,/ and He has appointed for you of your wives/ sons and grandsons, and He has provided you/ of the good things.
> (XVI: 266)

> Marry the spouseless among you, and your/ slaves and handmaidens that are righteous;/ if they are poor, God will enrich them/ of His bounty; God is All-embracing,/ All-knowing,/
> (XVI: 356)

> And of His signs/ is that He created you of dust; then lo,/ you are mortals, all scattered abroad./ And of His signs/ is that He created for you, if yourselves,/ spouses, that you might repose in them,/ and He has set between you love and mercy./ Surely in that are signs for people to consider.
> (XXX: 412-413)

This is an ideal that is supported also by the Hadith:

> Narrated Sa'id bin Jubair: Ibn Abbas asked me, "Are you married?" I replied, "No." He said, "Marry, for the best person of this (Muslim) nation (i.e. Muhammad) of all other Muslims, had the largest number of wives."
> (Hadith 7.7: 5)

The impact of marriage as a force of societal stability is emphasized specifically by traditions that refer to it as a means to reduce the desire for illegal sexual intercourse.

> Narrated 'Alqama: While I was walking with 'Abdullah he said, "We were in the company of the Prophet and he said, 'He who can afford to marry should marry, because it will help him refrain from looking at other women, and save his private parts from committing illegal sexual relation; and he who cannot afford to marry is advised to fast, as fasting will diminish his sexual power."
> (Hadith 3.129: 72)

As both the Qur'an and Hadith reveal, illegal sexual intercourse among even single Muslims was a crime for which severe punishments were mandated.

> Narrated Zaid bin Khalid: Allah's Apostle ordered that an unmarried man who committed illegal sexual intercourse be scourged one-hundred lashes and sent into exile for one year.
> (Hadith 3.817: 497)

This harsh perspective was due to the fact that the Prophet was "aware of the potential for moral disruption and social disintegration resulting from unbridled sexual drives."[63]

> Human sexuality and its accommodation into legal form are a thorny issue for any legal system, as sexual instinct is not readily susceptible to rational control and organization. Given the crucial social dimension of sexual desire, viz. the biological reproduction of the group and the transmission of property to the offspring, no system of law can afford to ignore it. Islamic law recognizes the anarchic dimension of sexual impulse and attempts to regulate it via a legalistic, gender-based, and polygamous approach to human sexuality.[64]

To deal with this matter, Islamic law generally "recognizes monogamy or the union of one man and one woman as a valid form of marriage. However, Islamic law also allows polygamy under exceptional circumstances."[65]

Polygamy is a very contentious issue with respect to a woman's position according to Islamic Law. According to Jan Goodwin, it is "the specter that haunts every married Muslim woman;"[66] as evidenced by the Qur'an, a Muslim man is able to marry up to four wives.

> Give the orphans their property, and do not/ exchange the corrupt for the good; and devour/ not their property with your property; surely/ that is a great crime./ If you fear that you will not act justly/ towards the orphans, marry such women/ as seem good to you, two, three, four;/ but if you fear you will

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[63] Arabi, Oussama, *Studies in Modern Islamic Jurisprudence* (The Hague, Netherlands: Kluwer Law International, 2001) 150.
[64] Ibid 150.
[65] Syed, Mohammed Ali, *The Position of Women in Islam* (Albany, New York: State University of New York Press, 2004) 41.
[66] Goodwin, Jan, *Price of Honor, Muslim Women Lift the Veil of Silence on the Islamic World* (Boston and New York: Little, Brown & Company, 1994) 32.

> not be equitable,/ then only one, or what your right hands own;/ so it is likelier you will not be partial./
> (IV: 72)

What is the correct interpretation of this verse? Does it mean that man had permission to marry up to four women at one time, or does it suggest that four wives are the Islamic ideal for each man? Both interpretations have been advocated throughout Islamic history, causing much controversy. Indeed, David Pearl suggests that one main cause of the contention is "the view of many women's groups that the existence of law of the right to take a second [or third, or fourth] wife severely hinders the progress towards the emancipation of Muslim women. Certainly, there is more to this discussion than Qur'anic injunction and male desire. One must consider the socio-historical context of this decree. That polygamy was permitted by Islam was revealed to the Prophet at the time of the Battle of Uhud, which left in its wake many orphaned children and many widowed women.[67] This sizeable group of women and children, for which there were suddenly no legal guardians, became an issue of social concern that the Prophet had to address. Rather than to allow these innocents to suffer alone and not be provided for, it has been suggested that, in the spirit of compassion, ethics and social justice, Muhammad encouraged men to take more than one wife as a pragmatic solution to a circumstantial societal problem.

> Polygamy was not intended to be an automatic right for Muslim men, a chance to trade in the old model for a sleeker, newer version. The Prophet Muhammad's original intention was to provide protection to widows and orphans.[68]

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[67] Ahmed, Leila, "Women and the Advent of Islam," *Signs: Journal of Women in Society and Culture*, Vol. II, no. 4, 1986.
[68] Goodwin, Jan, *Price of Honor, Muslim Women Lift the Veil of Silence on the Islamic World* (Boston and New York: Little, Brown & Company, Ltd, 1994) 33.

Though the outcome may not be favorable towards women today, it seems that the Prophet's original intention was done so out of compassion and a sense of social justice; in fact, instead of oppressing women, it was done as a means to improve the lot of many otherwise disadvantaged women within Muslim society. With respect to those women that polygamy would affect less beneficially, mainly first wives, the Qur'an and Hadith were equally clear on the necessity for just and ethical behavior. In fact, the qualification on the issue of polygamy was that a man was allowed up to four wives if, and only if, he was able to provide equitably for each.

> You will not be able to be equitable/ between your wives, be ever so eager;/ yet do not be altogether partial/ so that you leave her as it were suspended./ If you set things right, and are godfearing,/ God is All-forgiving, All-compassionate./
> (IV: 91)

The Prophet, himself, lived as an example of how to treat many wives in an equitable manner.

> Narrated Qatada: Anas bin Malik said, "The Prophet used to visit all his wives in a round, during the day and night and they were eleven in number." I asked Anas, "Had the Prophet the strength for it?" Anas replied, "We used to say that the Prophet was given the strength of thirty (men)." [...]
> (Hadith 1.268: 165)

Essentially, with this socio-historical perspective, it seems that the reasoning behind the institution of polygamy was that it would have caused a greater harm to society had these widowed women and orphaned children been left alone and unaccounted for, than if they were joined within a social contract of marriage to men who may have already had wives. That said, how the issue of polygamy has been interpreted

and applied throughout history is a matter that is now distinct from the original intentions of the Prophet.

> The permission is explicit in the Qur'an, and any Muslim determined to make use of it is not going to be, and has not in the past been, deterred from doing so. Economic or social pressure or peer disapproval may act as a brake, but it is not arguable that Muslims have considered this permission to be bound at a particular time in history or that fear of behaving unjustly toward other wives has prevented any Muslim from utilizing what he sees as divine saction.[69]

Thus, polygamy is an example of a scriptural matter that could be interpreted in different ways to fit both traditionalist and modernist molds. For example, polygamy could be considered either as a hindrance to the rights of women in modern times or it could be looked at as a socio-historical phenomenon, intended to improve the lot of women who were left alone in Muslim society after losing their husbands to battle. This flexibility of interpretation illustrates the problem of attempting to apply what is said in the Qur'an to the contemporary Islamic world without diverging from strict literal interpretation. The principle underpinning the Islamic notion of polygamy seemed to be one that promoted, at the very least, equitable treatment of each wife, so as to not abuse or ignore one at the expense of another. This intention is expressed clearly by the Prophet's own treatment of his wives:

> Whenever the Prophet intended to proceed on a journey, he used to draw lots amongst his wives and would take the one upon whom the lot fell. Once, before setting out for Jihad, he drew lots among us and the lot came to me; so I went with the Prophet.
> (Hadith 4.130: 85)

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[69] Saleem Qureshi, "The Muslim Family: The Scriptural Framework," *Muslim Families in North America*, ed. Earle H Waugh, Sharon McIrvin Abu-Laban, Regula Burckhardt Qureshi. (Edmonton: U of Alberta P, 1991) 45.

This particular tradition was narrated by Aisha and illustrates one manner in which the Prophet attempted to treat his wives fairly. Summarily, the Qur'an stresses not only that women should be treated fairly and compassionately but also that men and women should be regarded as complementary to each other, one gender providing what the other lacks. Be that as it may, over the centuries, the intention behind polygamy has been greatly overshadowed by the potential for the abuse of women as a result of its legality according to Islamic law.

Divorce is another matter that must be considered with respect to a woman's position within the family. Although marriage is explicitly idealized in both the Qur'an and Hadith, Islam also provides very clear instructions with respect to divorce, when a marriage is intolerable for one or both spouses. As Noel Coulson outlines, divorce within traditional Islamic law may be initiated in one of three ways: mutual decision, judicial decree on behalf of the wife and *talaq*, the unilateral and unequivocal decision of the husband.

> First, [there is divorce] by the mutual consent of the spouses, where the simple agreement of the parties dissolves the union without the necessity of any recourse to judicial proceedings. Second, [there is termination] by a judicial decree of divorce granting the petition of a wife who establishes that her husband is afflicted with a disease of mind or body, or is guilty of some matrimonial offence, such as cruelty, desertion, or failure to maintain, which makes married life intolerable for her. Last, but not least, by the unilateral termination of the marriage by the husband's exercising the power of what is known as *talaq*, a process which is best termed, to distinguish it from the other forms of divorce, "repudiation" of his wife by the husband.[70]

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[70] Coulson, Noel J, *Conflicts and Tensions in Islamic Jurisprudence* (Chicago, Illinois: University of Chicago Press, 1969) 45-46.

All three merit consideration but it is the last, *talaq*, that is by far the most controversial with respect to a woman's status, as it can be interpreted as attributing unlimited and ultimate authority to a husband.

With respect to divorce in general, Islam made some significant improvements regarding the treatment of women. Whereas in pre-Islamic Arabia "women were treated as nothing but chattel"[71] to be bought and discarded at will, Islam decreed that there were specific procedures – most of which were underpinned with notions of honor and kindness – to be followed. Additionally, since marriage was preferred, there were also included several verses intended to encourage a husband to take back his wife and to reconcile the troubles between them. If, indeed, reconciliation is not a possibility, then Islam specifically says that a wife must be treated appropriately upon her release from the marriage contract.

> Divorce is twice; then honourable retention/ or setting free kindly. It is not lawful/ for you to take of what you have given them/ unless the couple fear they may not maintain/ God's bounds; if you fear they may not maintain/ God's bounds, it is no fault in them for her/ to redeem herself. Those are God's bounds;/ do not transgress them. Whosoever/ transgresses the bounds of God – those/ are the evildoers./
> (II: 31-33)

> There shall be for divorced women/ provision honourable – an obligation/ of the godfearing.
> (II: 34)

In order to ensure that divorce is not undertaken lightly, as it may have been under pre-Islamic customary law, Islam prohibits the remarriage of a divorced husband and

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[71] Syed, Mohammad Ali, *The Position of Women in Islam, A Progressive View* (Albany, New York: State University of New York Press, 2004) 1-2.

wife, until such time as the wife has married and consummated marriage with another man.

> If he divorces her finally, she shall not/ be lawful to him after that, until she/ marries another husband. If he divorces her,/ then it is no fault in them to return/ to each other, if they suppose that they will/ maintain God's bounds. Those are God's bounds;/ He makes them clear unto a people/ that have knowledge./
> (II: 31-33)

Prior to the final and absolute separation of husband and wife, there was a waiting period, *'idda*, which was an innovation for Muhammad's society and ensured two things that served as direct benefits to women. First, the *'idda* guaranteed that a man could not immediately and, at will, discard his wife, thereby leaving her with no means of legal protection and sudden financial severance from her marriage contract. Second, it guaranteed that, at least for this set period of time, a woman would be guaranteed maintenance from her husband. The waiting period was prescribed as being one of two lengths: three menstrual cycles of the wife or, if she was pregnant, until her child had been delivered.

> Divorced women shall wait by themselves/ for three periods; and it is not lawful/ for them to hide what God has created/ in their wombs; if they believe in God/ and the Last Day. In such time their mates/ have better right to restore them, if they/ desire to set things right.
> (II: 31-33)

> O Prophet, when you divorce women, divorce them/ when they have reached their period. Count the/ period, and fear God your Lord. Do not expel/ them from their houses, not let them go forth,/ except when they commit a flagrant indecency./ Those are God's bounds; whosoever trespasses/ the bounds of God has done wrong to himself./
> (LXV: 590)

Divorce by judicial decree on behalf of a wife was another means by which the rights of women within the marriage contract were highlighted and formalized by Islamic law. Both the Qur'an and Hadith contain statements that exhibit concern for the treatment of women by their husbands. Also, "the Prophet Muhammad was extremely sympathetic to Muslim women and was conscious about the special rights of Muslim wives in matrimonial relationships with their husbands."[72] When these were not respected, or a woman claimed that her husband was deficient in some way regarding his duties in the marriage, she could obtain a divorce. This is evidence by the traditions of the Prophet:

> Narrated Ibn 'Abbas: The wife of Thabit bin Qais came to the Prophet and said, "O Allah's Apostle! I do not blame Thabit for defects in his character or his religion, but I, being a Muslim, dislike to behave in un-Islamic manner (if I remain with him)." On that Allah's Apostle said (to her), "Will you give back the garden which your husband has given you (as Mahr)?" She said, "Yes." Then the Prophet said to Thabit, "O Thabit! Accept your garden, and divorce her at once.
> (Hadith 7.197 150)

However, divorce by judicial decree may not be as beneficial to woman as initially considered, as she must return the property she gained in marriage to her husband, contingent to her release from the marriage contract. In essence, she is paying for her freedom from her husband, a notion which seems to be supported by the Qur'an's mention of a wife's "redemption".

> It is not lawful/ for you to take of what you have given them/ unless the couple fear they may not maintain/ God's bounds; if you fear they may not maintain/ God's bounds, it is no fault in them for her/ to redeem herself.
> (II: 32)

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[72] Syed, Mohammad Ali, *The Position of Women in Islam* (Albany, New York: State University of New York Press, 2004) 49.

Additionally, there exist odd sentiments within the scripture, which suggest that, in order to prevent divorce, a woman is able to waive her rights to her husband.

> Narrated Aisha regarding the explanation of the following verse: 'If a wife fears cruelty or desertion on her husband's part.' A man may dislike his wife and intend to divorce her, so she says to him, "I give up my rights, so do not divorce me." The above verse was revealed concerning such a case.
> (Hadith 3.630: 378)

However, it is the institution of *talaq*, a husband's right to divorce by repudiation, that encourages the most criticism. Within the parameter of this right, men retain the right to divorce their wives at will with no warning. Though tempered by verses and traditions that encourage kindness and honor within divorce proceedings, this is a practice that clearly submits the rights of a woman to those of a man.

> The reservations made by Islam both in the Qur'an and in the hadith on the unilateral right of the husband [...] and the introduction of the dower and the 'idda period, provide only limited checks on the husband's powers. In all Muslim countries there has been pressure to introduce reforms which will safeguard the wife's rights, and enable a proper opportunity to be made to attempt reconciliation.[73]

There remains no recourse within the sources of Islamic Law with which a wife can prevent herself from *talaq*. It is binding and absolute. A Muslim husband may, at will, repudiate his wife by saying that he divorces her and repeating it three times, and divorce is immediate. His reason for doing so "is not subject to scrutiny by the court or any other official body. His *talaq* is entirely an extrajudicial process."[74]

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[73] Pearl, David, *A Textbook on Islamic Law* (London, Great Britain: Croom Helm Ltd, 1979) 93.
[74] Coulson, Noel J, *Conflicts and Tensions in Islamic Jurisprudence* (Chicago, Illinois: The University of Chicago Press, 1969) 45-46.

Woman in Society

This brings one to consider the role of the woman as a member of Islamic society. One dimension of this discussion is the issue of how a woman is viewed within the public sphere – is she permitted to enter the public realm and, if so, how is she presented in terms of dress and actions. Much of today's debate around women in the public sphere pertains to Islamic dress codes, particularly the veil, which will be discussed in great detail further in this thesis. Many issues like this, regarding a woman's ability to enter public space and the manner in which she must present herself, are subsumed under the broader concept of modesty, as prescribed by the Qur'an and Hadith.

As touched upon previously, religion is the language of modernists and reformers as well as traditionalists and Islamists. The latter group, best exemplified by the Ayatollah Khomeini for the purpose of this discussion, can force the veil or social seclusion upon women, in the name of scriptural adherence to the principle of modesty and for the fulfillment of their interpretation of the creation of a truly 'Islamic' state. Again, in considering this portion of women's lives in the Muslim world, it is important to remember that the seventh century retains ideological significance, as the life of the Prophet and the society that he created are still considered models of an ideal version of an Islamic polity. Interestingly, within the context of modesty and a dress code, there is no explicit statement in either the Qur'an or the Hadith that says that women must be veiled according to the Word of God. Rather, it can be inferred through the underpinning values of modesty,

morality and ethics that all Muslims should act and present themselves in a manner that is conducive to modest and pious behavior but, as is the case with most matters, there is no clear definition of what should or should not be done so as to ensure proper behavior. Instead there are only verses and traditions that iterate the ideals to the believers. For example, the following scriptural statements present vague lists of values that are prescribed by God and others that are forbidden:

> Surely god bids to justice and good-doing/ and giving to kinsmen; and He forbids/ indecency, dishonor, and insolence,/ admonishing you, so that haply/ you will remember./
> (XVI: 268)

> Narrated Salh bin Sa'd: The Prophet said, "Whosoever guarantees me (the chastity of) what is between his legs (i.e. his private parts), and what is between his jaws (i.e. his tongue), I guarantee him Paradise.
> (Hadith 8.799: 523-524)

Though modesty, along with other favored principles, would have been expected from both women and men within the Muslim community, the focus clearly was on the behavior of women, rather than that of men.

> And say to the believing women, that they/ cast down their eyes and guard their private/ parts, and reveal not their adornment/ save such as is outward; and let them cast/ their veils over their bosoms, and not reveal/ their adornment save to their husbands,/ or their fathers, or their husbands' fathers,/ or their sons, or their husband's sons,/ or their sisters' sons, or their women,/ or what their right hand owns, or such men/ as attend to them, not having sexual desire,/ or children who have not yet attained knowledge/ of women's private parts; nor let them stamp/ their feet, so that their hidden ornament/ may be known. And turn all together/ to God, O you believers; haply so/ you will prosper./
> (XXIV: 356)

The enforcement of modesty upon women included both issues of dress and other matters such as travel and open interaction within society.

> Narrated Ibn 'Umar: The Prophet said, "A woman should not travel for more than three days except with a Dhi-Mahram (i.e. a male with whom she cannot marry at all, e.g. her brother, father, grandfather, etc. or her own husband.)" (Hadith 2.192: 109)

Thus it seems that, although modest and conservative behavior was mandated for all believers, there was indeed a difference noted between sexes. Whereas men's adherence to Islam was addressed more passively in this regard, women's modest and sexually demure manners were stressed and enforced actively throughout Muslim society. Yet vagueness remains between the ideals prescribed in the Qur'an and Hadith and how these translate into actual behavior within society, both in the past and today. The importance of this gap is heightened, as the gray area between ideal and actuality is highlighted by the fact that, within contemporary Islamic societies, the Qur'an and the Hadith are looked to as a means with which to support some people's claims that all women should be veiled, remain within the private sphere and conduct themselves in such ways as to suggest an inherent inferiority to their male counterparts.

While considering the role of the woman within society, it is important to examine her ability to serve as a witness according to Islamic law. This brings one to consider the role of the woman as an individual. Prior to the implementation of Islamic ideals, women held a very low social position and had virtually no rights. Not only were they considered to be inferior to men, they were also treated like slaves and property; it was common practice for a son to inherit ownership of the women (slave-girls) of his father. It was the introduction of Islam that improved significantly the status of women, even though modern perception of this faith is that

it advocates the oppression or maltreatment of the female sex. This is simply not the case. Much debate has ensued as a result of a particular verse in the second *sura* of the Qur'an.

> And call in to witness/ two witnesses, men; or if the two/ be not men, then one man and two women,/ such witnesses as you approve of,/ that if one of the two women errs/ the other will remind her; and let the witnesses/ not refuse, whenever they are summoned. (II: 42)

This verse pertains to the proper course of action with which to conduct a credit transaction. The credit, be it large or small, must be written down and there should be two witnesses to the deed; the witnesses can be two reliable adult males or, if two such males are not available, then one man and two women will suffice. As stated in the above verse, two women are required so that "if one of the women errs the other will remind her" (II: 42). Fazlur Rahman believes that this specific course of action is due to the socio-historical fact that women traditionally were not accustomed to dealing with credit or any sort of business transaction and, thus, could be more forgetful or prone to confusion as compared to men, who were familiar with such practices.[75] A traditionalist interpretation of this verse suggests that "the law that two female witnesses equal one male is eternal"[76] and that a social change that would enable women to become more familiar with financial transactions would be "un-Islamic." A modernist interpretation, on the other hand, would claim that "the testimony of a woman [was] considered of less value than that of a man [due only to the fact that she had] weaker power of memory concerning financial matters."[77]

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[75] Fazlur Rahman, *Major Themes of the Qur'an* (Minneapolis: Bibliotheca Islamica, 1980) 49.
[76] Rahman 49.
[77] Rahman 49.

However, when women became more familiar with such matters – a situation that should be considered a step towards the betterment of society – there would no longer be a basis for the two to one ratio proscribed in the time of the Prophet. Thus, in contemporary Islamic societies where societal changes have occurred, the testimony of a woman could be considered equal to that of a man if she is familiar with credit transaction because the issue is memory and reliability of testimony, not an inherent inferiority of female witnesses. This divergence of interpretation highlights the clash of today. If one adheres to the modernist interpretation, there is nothing within the fundamental texts of Islam to make a legitimate case for the belief that women are inferior. Certainly, the two sexes are different, but can one be deemed superior? If, as Rahman propounds, the difference is based on traditional function, then would the gap not decrease over time? For instance, if a woman is economically sufficient either by earning wealth on her own or by means of inheriting it, and if she contributes to the household expenses (a contribution which the Qur'an states as being the explicit duty of the man, a duty for which the woman has absolutely no responsibility) would the alleged superiority of the man not be reduced, since, as human beings, there is no inherent superiority of substance of one over the other, as both man and woman were derived from one soul? These are the kinds of questions being faced by contemporary Islamic societies today.

A Woman's Legal Rights

Essentially, two main points can be drawn from the fundamental texts with respect to the rights and responsibilities of women in accordance with Islamic Law.

First, she must serve as a source of comfort and peace of mind to her male counterpart, satisfying his marital needs and serving as the guardian of his home; in this capacity, she contributes to the calm and stability of greater society that was desired by Muhammad. Second, men and women are different but this does not mean necessarily that men are superior. Each gender has a unique role to play within the Islamic framework of society. The position of a man is to function within the public sphere in order to provide for a woman economically, while she provides for him within the private sphere. The separation is economic in nature and does not stem from any inherent flaw in the part of the female character. It seems that this type of societal organization was, in part, a reaction to pre-Islamic Arabia and all that came to be considered *jahiliya*. Initially, Muhammad's vision for society succeeded in improving the status of women. But the world has not remained stagnant and, as such, the roles of women within Islamic society have shifted and must now be reconsidered to reflect contemporary realities.

Contemporary Clashes: The *Shari'a* & Modernity

There exists a multitude of individual traditions that can be used by either traditionalists or modernizers to support their cases for or against a particular societal reform; this is one of the major problems pertaining to the status of women within the contemporary Muslim world, as it adds to the escalation of conflict between these two faces of Islam. Interestingly, there does exist detailed revelation in the Qur'an and many traditions of the Prophet that relate to women, but the fact remains that these came into existence in a very different socio-historical period of Islamic

life. What worked to solve the problems of pre-Islamic Arabia certainly cannot work for modern Islamic societies, such as the Islamic Republic of Iran. Even the social contract of marriage, an institution so fundamental to society since the very beginning of Islam, must be turned to with societal changes in mind. To illustrate, one should consider the provisions in the Qur'an relating to the corporal punishment of women. Some thinkers have alleged that there is a scriptural basis to support physical punishment for a few, select offences. (These include: If a woman fails to beautify or adorn herself when her husband desires her to do so; If a woman refuses to have intercourse with her husband; If a woman does not offer prayers; and, If a woman goes out of the house without her husband's permission after she has received her full dower.[78]) Examples such as these have been used by men and women to further the removal of Muslim women from the public sphere, yet this result may not have been the intention of Islam. For instance, with respect to a woman's ability to leave her home without the permission of her husband, Mohammad Mazheruddin Siddiqi contends that "[j]ust as a man can stipulate that his wife shall not go out except by his permission, it is open to the woman to insist that she shall not be prevented from going out of her home on suitable occasions[79] for her social, religious or economic needs, so long as her absence from the home neither inhibits the proper upbringing of her children nor challenges the work of her husband. It seems usual that practical matters such as where to live and whether a wife be allowed to leave her home for a variety of purposes can be agreed upon prior

[78] Shukri, Ahmad, *Muhammedan Law of Marriage and Divorce* (New York: AMS, 1966) 83-89.
[79] Siddiqi 65-66.

to marriage within the scope of a marriage agreement. Again, this suggests that a woman does not lose her legal rights under Islam.

> The legal equality of men and women in Islam is a fact which had never been in dispute ... There is not legal right belonging to man for which a corresponding female right cannot be cited.[80]

That said, Islam does not provide for the Western ideal of gender equality. So often in debate on the status of women, the term, 'equality,' is introduced as an ideal or as a standard to be met. Certainly, the notion of equality in the Western sense has meant that societies have changed to ignore biological differences between the sexes and have attempted to integrate both genders into all facets of society by saying that man and woman are fundamentally the same, as both are human and, thereby, both should be afforded equal rights and opportunities. Islam, on the other hand, acknowledges that men and women are different and, as such, provides a framework in which each plays a unique role in the composition of greater society. Certainly the Qur'an and the Hadith acknowledge that, in substance, (i.e. the soul), both genders are equal but in function they are markedly different. Though the Islamic principles are there to encourage the fair and equitable treatment of wives by their husbands within the family unit, difficulty remains in ensuring the practice of such ideals. The private nature of the marital relationship makes it impossible for the moral principles of the Qur'an and the Hadith to be enforced definitively. Islam provides a just framework in which love and compassion between man and wife are encouraged, yet the reality is that this guide is not always followed. Human relations

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[80] Siddiqi 76.

in general and "marital relations in particular are governed and regulated far more by customs, traditions and the … outlook of human beings"[81] than by Islamic ideals.

As stated previously, a stable family life is imperative not only to serve better the interests of society as a whole, "but also for the proper growth and development of future generations."[82] The Qur'an and the Hadith outline a marital unit in which a woman and a man complement each other and treat one another with love and compassion. There is great detail in both fundamental texts to support this. Also, as mentioned previously, the Qur'an supports a basis of equality between marriage partners.

> Mankind, fear your Lord, who created you/ of a single soul, and from it created/ its mate, and from the pair of them scattered/ abroad many men and women [...]. (IV: 72)

To sum up, the obligations of husband and wife within the Islamic family unit, according to the basic texts, are mutual but not identical. If one adheres to principles and avoids confinement to specifics, one can argue that this tells us that Islam values individual rights and provides for those of all of its members. Also, an examination of the family unit according to the scripture suggests that the stability of the community was considered to be very important. This makes sense when one considers not only the socio-historical context of Muhammad's time but also the needs of contemporary society. In short, according to the Qur'an and the Hadith, one can suggest that both individual rights (at least in terms of equity, if not equality) and societal stability are important issues that can be supported by Islamic principles.

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[81] Siddiqi 79.
[82] Siddiqi 53.

Chapter 3: Human Rights

Today the issue of the position of women in Islam is one of contention, both within the Muslim world and externally.

> The majority of Muslim women still find their lives controlled by their closest male relative. They are the daughters whose future marriage partners continue to be determined by their fathers. They are the brides who must be virgins on their wedding nights in a culture where if they are not, honor killings are common and often carried out by the girl's own brothers ... Even though Islam states that a women has the right to refuse a husband selected for her, in reality, familial pressures can be so strong, they may result in her death if she is not acquiescent.[83]

Indeed, as I researched and learned more about the topic for the purposes of this work, I became increasingly convinced of its significance – both as an issue of rights "per se" and as a symbol of broader societal issues. As Jan Goodwin suggests, "while female honor continues to be the fulcrum around which Islamic society pivots, the level of women's confinement remains the barometer of change in the Muslim world."[84] An examination of the position of women within a society is indicative not only of the laws and cultural practices that govern the community, but also of the responsiveness of the state to perceived injustices, and to the sentiments of the community itself. Nobel Laureate Shirin Ebadi (a leading human rights activist, and Iranian lawyer and form Judge) has said that it is not enough to have good laws that are intended to protect women; the real issue is the enforcement of those laws by government and within society. A similar position is taken by Lisa Hajjar, whose research in *Religion, State Power, and Domestic Violence in Muslim*

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[83] Goodwin, Jan, *Price of Honor: Muslim Women Lift the Veil of Silence on the Islamic World* (Boston and New Yok: Little, Brown & Company, 1994) 32.
[84] Goodwin 353.

Societies: A Framework for Comparative Analysis (2004) focuses on a comparative study of domestic violence in Muslim societies in the Middle East, Africa and Asia. She suggests that when violence against women occurs within the private sphere (i.e. the family unit) it raises questions about the law, legal administration, the state and society at large. Her discussion of the pervasiveness of legal impunity (be it *de jure* or *de facto*) provides me with a broader context of understanding when considering the complex relationship among Shari'a law, cultural practices, public opinion and government within the Muslim world. In considering the issues of human rights and the position of women, I came to realize the myriad of complexities associated with such broad issues. At the same time, however, as I learned more about horrific, specific cases of human rights abuses towards Muslim women and the response (or lack thereof) of the government and of society, as a whole, I became increasingly convinced of the importance of trying to examine some of the larger issues to shed some light, through examination, on the matter as a whole. To this end, this chapter will examine the issue of human rights and consider the significance and ramifications of some high profile cases. Additionally, it will discuss three main points: First, that one must consider the person whose right it is; second, that it is the law to protect rights; and, third, that the existence of laws is not enough to guarantee rights – laws require the support of society and must become part of a political culture in order to succeed.

The Plight of Women

As one half of most societies, women comprise an important demographic – this is not to suggest that this work envisions women as a universal group, rather it indicates an acknowledgement that women can face unique challenges within society – particularly within Islamic society. When one speaks about Muslim women today, the main topic often seems to be a question of why Muslim women are devalued and mistreated. Whereas some thinkers point the finger at Islam and its literal interpretations and applications, others resist, suggesting that "Islam itself is not an agent; it neither devalues nor mistreats. When Muslim women are mistreated, it is because Muslim men – and some Muslim women – mistreat them."[85] It is interesting to consider how a faith that, in the time of Prophet Mohammed, was used to liberate women through its progressive view of society, today can be used to suppress and to violate rights.

> The full story is complex, but in brief: women in Muslim cultures have been relegated and sometimes confined to the home, have practiced their religion in private rather than at the mosque, and have been subject to the dictates of the males of their families. (Much of that reality, of course, they share with virtually all societies in the world.)[86]

For the most part, traditional interpretations, applications and perspectives on Islam – politically categorized as the Islamist or traditionalist point of view – continue to exhibit dominance throughout the majority of the Muslim world, if even concentrated in government or in the state by religious clerics. Though youth and other members of the general public may want reform or change, repression

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[85] Jane I. Smith, *Clothes and Convictions: Women in Islam*, Christian Century, January 30 – February 6, 2002, (26-29), p. 26.
[86] Jane I. Smith, 27.

continues from the top down within the state. With this comes the expectation that women remain within the private sphere, dress modestly, act modestly, and live in accordance to a literal adherence to the Qur'an and Hadith.

> Rather than addressing real evolving societies, Islamists abstract Islam as an esoteric system of unchanging rules and equate it with complex, changing, and historically specific social and political conditions. As a result, they transform the practical issue of women's historical subjugation in patriarchies, which is a matter of economic, social, cultural and political forms of power taken as societies evolve, to arcane questions of moral negligence and religious slackness.[87]

Mahnaz Afkhami believes that this emphasis on women is due to "gender-based inequalities in citizenship rights and human rights are policies and enforced by the state as representing the will of the people, the values of religion and the common good."[88] Additionally, other socioeconomic factors also are at play. Many of the world's Muslim women live in extreme poverty, bear large numbers of children and remain excluded from their society's public realms. It is difficult, therefore, to conceptualize the application of a notion of individual rights, when women, as a whole, seem to be grouped collectively within the minds of Islamists. From a Western perspective, cases of human rights abuses may seem to be glaringly obvious cries for change, whereas in some Muslim societies – at least in the minds of those who perpetrate such crimes – such actions may register more as a means to restore social order than as a response to a perceived social misstep or impropriety. There certainly is a clash of perspectives regarding the issue of rights. For this reason, a broader consideration of differing perspectives is required.

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[87] *Faith and Freedom: Women's Human Rights in the Muslim World* ed. by Mahnaz Afkhami (New York: Syracuse UP, 1995) 3.
[88] *Faith and Freedom: Women's Human Rights in the Muslim World* 135.

A Basic Discussion of Human Rights

The issue of human rights is a complex and varied one in today's world. Individuals and groups struggle in many parts of the world for freedoms and rights that they believe should be inherent to and accessible for all of humanity. Political regimes, communities and individuals oppress, while non-governmental organizations, governmental players, individuals and groups work to extol the value of fundamental human rights and attempt to share what they believe are universal principles throughout the world. In a traditional sense, human rights come into play when a political regime oppresses or abuses the rights – either individual or collective – of the members of the society it governs. This notion of state-focused rights stems from the very inception of human rights discourse – a discipline that many believe was born out of the atrocities witnessed throughout the Second World War.

Though some believe that there is no such thing as a universal concept of human rights, others believe that there is and that it is manifested clearly within the Universal Declaration of Human Rights (UDHR), which was adopted by the United Nations and its 58 member states (at that time) on December 10th, 1948. The Declaration was one of the first major achievements of the UN and, after 50 years, remains a powerful instrument which continues to exert enormous influence on people's lives all over the world.[89] The UDHR presents a vision to the world and all of its diverse players about the sort of international community that the UN and its members would theoretically like to develop and support. It is the implementation of

[89] http: www.unhchr.ch/udhr/miscinfo/carta.html (accessed February 6, 2006)

the principles contained within this vision that prove problematic. The creation of the UDHR resulted also in the development of two international covenants: one on civil and political rights and another on economic, social and cultural rights.[90] Together, the declaration and theses two covenants comprise an international bill of rights, of sorts, as they outline a set of (ideally) universally accepted rights and procedures, which a majority of states have agreed to in principle and ratified.

Whether or not they adhere to what they have ratified is another issue altogether. In addition to these three items, specific treaties also have been developed over time to help outline and protect international human rights; an example of the focus of such a treaty would be to protect the rights of women. All of these commitments together help to make human rights a matter of global concern and focus. However, human rights achievements – though impressive groundwork has been made in the past 57 years – have been a contentious issue and concern for many advocates. According to Lyons and Mayall, the problem is two-fold:

1. Governments continue to violate their treaty obligations, the international community is divided on how to compel states to meet their commitments, there are tensions between different sets of rights, and the treaties run up against the claim of sovereignty by governments to deal with domestic problems without outside interference.
2. Increasing controversies over the rights of groups have complicated the original focus on the rights of individuals and the relationship between the state and the individual. This is especially true in the case of the rights of minorities, indigenous peoples, and women that were originally neglected in creating a baseline for the international human rights regime when the Universal Declaration was written.[91]

[90] *International Human Rights in the 21st Century: Protecting the Rights of Groups* – Edited by Gene M. Lyons and James Mayall, p. 3.
[91] Lyons & Mayall 3.

It is this second issue that is most applicable to the plight of women within the Muslim world. The example of women's rights within the Islamic Republic of Iran, for instance, is likely one of the confusion of individual and group rights – this will be discussed through an examination of women within various roles that they play within society.

> In any discussion of human rights within an Islamic context, it is important to consider the views expressed in the Qur'an and the Hadith with respect to morality, justice and responsibilities. According to Fazlur Rahman, "there is no doubt that a central aim of the Qur'an is to establish a viable social order on earth that will be just and ethically based."[92]

Certainly, the creation of Islamic society improved the status of many compared to that of pre-Islamic Arabia. This change was a direct result of both the principles contained within the Qur'an and the fact that the Prophet, himself, lived within the community as the prime example of ethical and responsible behavior. By means of specific reforms, the Qur'an was used successfully to improve the living conditions of "the weaker segments of the community: the poor, the orphans, women, slaves, [and] those chronically in debt."[93]

Though the scriptural sources are underpinned with values, ethics and notions of social justice, this tempering alone cannot provide for the development of a theoretical foundation, similar to that propounded by Western society, for human rights. Due to the vague and contentious nature of the Qur'an and Hadith, one must bear in mind also both the social and historical context of Islamic society. The changes introduced by Muhammad were made to liberalize certain features of

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[92] Fazlur Rahman, *Major Themes of the Qur'an* (Minneapolis: Bibliotheca Islamica, 1980) 37.
[93] Rahman 47.

Arabian society; today the same reforms would drastically turn back the hands of time and would result in dramatic blows to the rights of certain members of the contemporary Islamic community. This confusion is perhaps best highlighted in the realm of law. Often, proponents of a more traditional interpretation of Islamic Law look to the seventh century and the specific societal conditions of that time and attempt to argue that those same practices must be upheld in accordance with the law as revealed by the Qur'an and the Hadith.

> In understanding the Qur'an and social reforms, however, [one] will go fundamentally wrong unless [one] distinguishes legal enactments and moral injunctions. Only by so distinguishing can [one] not only understand the true orientation of the Qur'anic teaching but also solve the knotty problems with regard, for example, to women's reform. This is where the Muslim legal tradition, which essentially regarded the Qur'an as a lawbook and not *the religious source* of law, went so palpably wrong.[94]

The implementation of the ethical behavior discussed and encouraged by the Qur'an did serve to provide a framework of sorts for the creation of the first Islamic society, but it was never intended to provide for an entire way of life – that is to say, the provision of a political system, the establishment of a legal code, and so on. Accordingly, one should not confuse the social changes that were made in seventh century Arabia as constituting static rules by which any given community should live in order to comply with Islamic principles.

> The concept of rights under a particular religious or legal system, including that of *shari'a* is fundamentally different from that of human rights. Whereas human rights are, by definition, universal in that they are owed to all human beings by virtue of their humanity without distinction on grounds of gender or religion, the concepts of rights under *shari'a* is fundamentally premised on these distinctions. That is to say, there are different rights for Muslim men,

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[94] Rahman 47.

> Muslim women, and non-Muslims under *shari'a*, rather than equal rights for all, regardless of gender or religion.[95]

This indicates that – with respect to the issue of human rights within Islamic society – it is important to look to the fundamental sources and question the role that they play in either supporting or hindering the advancement of human rights, as well as to factor in the socio-historical context, customs and political will of a Muslim state.

Islamic Perspectives on Human Rights

When considering women within the context of Islamic society, it is important to examine the various roles that are, in fact, played by women. It is interesting to consider the family dimension; it is characteristic of an Islamic perspective but not as common an area of thought for contemporary human rights discourse – research on the latter predominantly discusses women's rights within society – as a group and as individuals. Accordingly, one wonders naturally what an examination of the family unit can tell us about the gender equality of human rights, for instance. Also, it seems logical to wonder what can be extrapolated from an examination of the family unit to help explain current social organization and pressures within Islamic societies. Often, the Islamic world is considered as comprising two separate and distinct spheres: the public and the private. It is important to consider relationships and roles within both as the two are inextricably linked. Traditionally, these spheres also have divided the Muslim world according to gender; historically, the world of Islamic women has been one lived predominantly

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[95] *Faith and Freedom: Women's Human Rights in the Muslim World* ed. by Mahnaz Afkhami (New York: Syracuse UP, 1995) 57.

within the private, not the public sphere. As such, it is imperative to examine the inner workings of the family unit, especially if one is to combat the many critics of Islam who propagate the notion that Islam is a faith and/or political tool that inherently opposes the rights and freedoms of half of its adherents: women. Understanding the Islamic view of the family unit is important also because, if one follows in the theory that the family unit is the building block of Islamic society, one must understand the essence of the parts of one is to understand the sum of these parts, so to speak.

According to Mohammed Mazheruddin Siddiqi, "a stable family life is necessary not only in the interests of society, not only for the happiness and moral development of the husband and the wife, but also for the proper growth and development of future generations."[96] It is from this belief in the necessity of family life that the relationship between husband and wife can be understood as being characterized by complementary rights and responsibilities. Unlike the countries that comprise the conceptual identity known as "the West," Islam has based its system of rights and responsibilities "not on a vague and abstract conception of [gender] equality [...] qualified by actual biological sex differences [...],"[97] but on the need to create and maintain a stable society.

Contrary to the beliefs of some, there is no verse in the Qur'an or individual tradition of the Prophet that states that the female gender is inferior to its male counterpart. Rather, what is said is that the two are different and should be treated as

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[96] Mohammad Mazheruddin Siddiqi, *Women in Islam* (Lahore: Institute of Islamic Culture, 1975) 63.
[97] Siddiqi 63.

such. This point is extremely significant for those trying to argue for human rights within Islamic societies. There is no scriptural basis to support the notion that the female half of the population should be discriminated against or hindered. What is supported, however, is the notion that a woman and a man, together, form one complete unit; each spouse is intended to complement the other, thereby creating stability within the family – and, by extension, within the society. There is no basis of marital inequality with which to support any suppression or maltreatment of women within contemporary Islamic societies. There is, however, a scriptural basis to support the idea that men and women possess mutual yet different rights and responsibilities within the bond of marriage; this, perhaps, is the fuel that is used by traditionalists to fire debates about human rights and other democratic ideals.

Islam does not provide for the Western ideal of gender equality. So often in debate on the status of women, the term "equality" is introduced as an ideal or as a standard to be met. Certainly, the notion of equality in the Western sense has meant that societies have changed to ignore biological differences between the sexes and have attempted to integrate both genders into all facets of society by saying that man and woman are fundamentally the same, as both are human and, thereby, both should be afforded equal rights and opportunities. Islam, on the other hand, acknowledges that men and women are different and, as such, provides a framework in which each plays a unique role in the composition of greater society. Certainly, the Qur'an and the Hadith acknowledge that, in substance, (i.e. the soul) both genders are equal, but in function they are markedly different. Though the Islamic principles are there to

encourage the fair and equitable treatment of wives by their husbands within the family unit, difficulty remains in ensuring the practice of such ideals. The private nature of the marital relationship makes it impossible for the moral principles of the Qur'an and the Hadith to be enforced definitively. Islam provides a just framework in which love and compassion between man and wife are encouraged, yet the reality is that this guide is not always followed. Human relations in general and "marital relations in particular are governed and regulated far more by customs, traditions and the [...] outlook of human beings [...],"[98] than by Islamic ideals.

A Contemporary Perspective

It is clear that Western and Islamic viewpoints differ with respect to the notion of human rights. Additionally, jurisdictional realities also contribute to the complexity of the situation (i.e. international law v. state law and societal practices). So how does this clash translate within contemporary issues? I believe that, to answer this question, one must consider some specific cases of human rights violations against Muslim women, in conjunction with a consideration of the theory and academic writing on Islamic law and politics.

Certainly, a leader in human rights advocacy today is Nobel Laureate Shirin Ebadi. The awarding of the Nobel Peace Prize in 2003 to a female Iranian lawyer, university professor and human rights advocate, marked the first time that a woman had won such a prize[99] and provided Ebadi with a new global level of authenticity that assists her public activism on behalf of Muslim women. Her frequent lectures

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[98] Siddiqi 79.

[99] Mahmood Monshipouri, "The Road to Globalization Runs Through Women's Struggle – Iran and the Impact of the Nobel Peace Prize," *World Affairs*, Vol. 167 No. 1 Summer 2004 (3-14), p.3.

and interviews shed light on human rights abuses that have occurred for decades but only now – through advocates such as herself and through the benefit of new global communications technologies – are becoming publicized and critiqued around the world. Ebadi and others like her now comprise the thread that weaves together different perspectives of human rights. She has the legitimacy of being a Muslim woman but she has great currency in the West vis-à-vis her Nobel Prize, her high level of education and her outstanding work in the area of law and human rights. She also comes from Iran, the one nation in the Muslim world that appears to be struggling with the two divergent faces of Islam: modernists and traditionalists.

The Islamic Republic of Iran is interesting in that although its general population seems to demand reform and to want to move towards a democratic system of government, it is also a country that remains controlled by the religious elite within the state and which has an abhorrent record of human rights violations, particularly spanning the past two decades. During this time, reports of the systematic human rights abuses have tarnished Iran's reputation in the international community. Middle Eastern specialists concur with this characterization, arguing that the Islamic Republic often has violated it own constitution by shutting down newspapers, political parties, professional associations, and labor unions. It has systematically tortured prisoners to extract false confessions and public recantations. It has incarcerated tens of thousands and has executed some twenty-five thousand

political prisoners, most of them without due process of law.[100] Educated women have harbored numerous grievances against the patriarchal attitudes and policies of the ruling conservative clerics in the regime, especially in the judiciary. Many grievances concern the matters of human security and social equity and thus are work-related, including job security, pay scales, promotion, maternity leave, and access to prestigious professions.[101] Furthermore, the reform movement of the late 1990s has failed to facilitate women's access to key political positions. Conflict is rife within the Islamic Republic and the world is also weighing in.

Ebadi has said that even though more than 55 years have passed since the adoption of the Universal Declaration of Human Rights, the world is still not free of human rights abuses. International law concerning human rights, ranging from civil, political and economic to social and cultural rights, has been recognized yet its implementation has been less than impressive. She believes that human rights should be part of a national culture and be inscribed within the constitutions of a state – thereby marrying international law with state jurisdiction. This type of combination of viewpoints (i.e. international v. state, Western v. Islamic) may, indeed, prove to be the answer as human rights advocates move forward with their work. Ebadi has constantly called into question the seventh-century view of women and has advocated a new strand of cosmopolitanism that embraces women's rights based on *ijtihad* (autonomous reasoning). She has argued that *ijtihad* is compatible

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[100] Ervand Abrahamian, "The Making of the Modern Iran," in *Introduction to Comparative PoliticsI, ed.* Mark Kesselman, Joel Krieger, and William A. Joseph, 3d ed., 527-618 (New York: Houghton Mifflin, 2004); see p. 612.
[101] Ibid.

with the provisions of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The most obvious discrepancies between Islamic laws and CEPAW related to adulthood age, blood money (*diyah*), and the witnessing rule, which equals two female witnesses with one male witness in the courts.[102]

Additionally, many Iranian feminists argue that it is important that those for whom international rules and standards of human rights are to be enforced regard them not as imposed from outside, but rather as corresponding and compatible with their own values.[103] Ebadi's views support this, as her focus on a modern interpretation of Islam entails a progressive view point that could be supported by the Muslim community over time. She has argued that human rights abuses throughout the Muslim world are politically contingent acts perpetrated by state elites, facilitated by a patriarchal culture and reinforced by Islamic traditionalists and extremists – all in the name of Islam.[104] On a broader level, she has argued that the laws themselves are insufficient and that there is a need for mechanisms to implement laws. She believes that "the mere existence of a good infrastructure for dealing with the law is

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[102] Mahmood Monshipouri, "The Politics of Culture and Human Rights in Iran: Globalizing and Localizing Dynamics," in *Constructing Human Rights in the Age of Globalization*, ed. Mahmood Monshipouri, Neil Englehart, Andrew J. Nathan, and Kavita Philip, 113-44 (Armonk, NY: M.E. Sharpe, 2003); see p. 132.

[103] Zahra Davar, "Independence and Economic Rights of Women," in *Islamic Views on Human Rights: Viewpoints of Iranian Scholars*, Organization for Islamic Culture and Communications, 209-27 (Tehran: Alhoda Publishers, 2001), 224.

[104] Mahmood Monshipouri, "The Road to Globalization Runs Through Women's Struggle – Iran and the Impact of the Nobel Peace Prize," *World Affairs*, Vol. 167 No. 1 Summer 2004 (3-14), p.6.

different from having the tools and mechanisms to deliver."[105] For instance, she asserts:

> [T]he law says that if a woman is beaten up by her husband, she can get a divorce from the courts, but [in the absence of any] welfare system for divorcees, and as long as we do not have secure homes for battered wives, what is the use of having permission to divorce your husband in the first place?[106]

For Ebadi, the flaw is not with Islam, rather it is with the political and legal machinery of a state that must be modernized and enforced. She was very clear about this shortly after winning the Nobel Peace Prize, noting that "the Qur'an does not contradict human rights. It is not Islam that is responsible for the failure to honor human rights, but the corrupt regimes in Muslim countries, which to my regret use religion as a justification for their illegitimate government."[107]

Specific Cases & Issues of Consideration

When focusing specifically on issues of human rights and women, there are a few issues that require specific consideration. Human rights violations vary in degree, severity and ramification. Some are more abhorrent than others, but all share the common denominator of repressing the position of women within Islam and within Islamic society. Specific types of crimes against women include: forced marriage; rape and honor killing; and forced Islamic dress.

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[105] Mahmood Monshipouri, 4.
[106] "Iran: Interview with Nobel Laureate Shirin Ebadi," UN Office for the Coordination of Humanitarian Affairs, http://www.IRINnews.org (accessed October 27, 2003).
[107] Quoted in *International Iran Times*, October 17, 2003.

Forced Marriage

This is an issue that clearly infringes upon the rights of women and reinforces their subservience to the men to whom they are promised by fathers, brothers, uncles or other male relatives. Even as recently as the middle of June 2006, forced marriage has made international headlines. In a rural region of Pakistan[108], a court barred the forced marriage of two young girls into a rival family as a means of compensation for a dispute over payment for three buffalo. According to Paryal Mari, a lawyer of the Human Rights Commission of Pakistan, a judge "overturned a ruling by an illegal council of tribal elders in the rural southern town of Sheikarpur involving [two] girls aged six and eight."[109] This traditional practice of marrying off girls at a young age has been outlawed in Pakistan but continues within rural areas of the country. As the Australian Broadcasting Corporation (ABC) News reports, "the argument developed over money owed to local feudal lord Imdad Sithar for the buffalos which he earlier gave to a villager named Mohammad Ramzan."[110] It was the girls' grandmother who opposed the arrangement.

Another example of forced marriage, also in Pakistan, was the promise of five young girls, committed to forced marriage by their family to a rival as a means to end a feud and to compensate for a 1997 murder. Fortunately, in June 2006,

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[108] This thesis references some examples of women's roles and positions within contemporary Islamic society, which occur outside of Iran. Even though this thesis contains within it a case study of Iran, a Shi'ite nation, I believe that there are common elements pertaining to the treatments of women that can be considered throughout the Muslim world as a whole. For this reason, I believe that the examples that I use, which occur within nations that have a Sunni majority, are also relevant to the overall goal of this thesis.

[109] http://global.factiva.com/aa/default.aspx?pp+Print Accessed June 28, 2006.

[110] "Pakistani Girls Saved From Marriage," 14 June 2006, Australian Broadcasting Corporation (ABC) News.

authorities also barred this arrangement. According to the Agence France Presse, "in a case that outraged human rights activists, tribal elders in the rural southern town of Jacobabad arranged the deal last month involved the girls aged between two and five."[111] The deal was meant to reconcile two families after one had allegedly killed a woman and a man nine years earlier in an "honor killing."

Honor Killing

According to the Baluchistan Times, "a serious and informed effort by all levels of Pakistani society is needed in order to change attitudes towards so-called honor killings, said a broad alliance of politicians, community leaders, religious figures, women's groups and [others]."[112]

> According to media reports, 158 women and 56 men have been killed in Karo Kari cases in Sindh alone between January and April 2006. In the NWFP and Punjab, 76 women and men have been similarly killed so far this year.[113]

As the Hindustan Times reported on May 29, 2006, "Karo Kari is a compound word literally meaning 'black male' and 'black female,' metaphoric terms for adulterer and adulteress."[114]

> Official data recently published by the Pakistani Senate shows that over 4,500 people have died in the last eight years as result of Karo-Kari. Of the victims, almost 2,800 were women and just over 1,300 were men. Thus twice as many women as men lose their lives to this most barbaric social custom.[115]

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[111] "Pakistan Marriage of Five Girls to Settle Blood Feud," 14 June 2006, Agence France Presse.
[112] "Pakistanis Must Change Attitudes To End Honor Killings," 23 May 2006, The Baluchistan Times. Global News Bytes 2006.
[113] Ibid.
[114] "Five Fall Victim to Pakistan Honor Killing," Hindustan Times, 29 May 2006. 2006 Hindustan Times Ltd.
[115] Ibid.

As recently as March 2005, the Pakistani Government, allied with Islamists, rejected a bill, which was intended to strengthen to law against 'honor killing,' on the grounds that it was 'un-Islamic'.

> Under the so-called Islamic legislation enacted by General Zia ul Haq, Pakistan's Islamist military ruler in the 1980s, proven killers can seek to buy pardon from the victim's family under the Islamic principles of compromise. Observers say Islamists still wield influence in parliament. The law has remained essentially unchanged since then.[116]

Indeed, one unfortunate example of this atrocious practice is the case of Samaira Nazir, a twenty-five year old Muslim in England who fell in love with an Afghan asylum seeker and refused to meet a series of suitors who had been lined up for her in Pakistan by her family. She was well traveled and educated, having studied travel and tourism at Thames University, but in 2005, Samaira Nazir was killed by her thirty-year old brother, a businessman, and seventeen-year old cousin, for getting engaged to her boyfriend. According to *The Times*:

> In April last year Miss Nazir was summoned to the home to be killed to protect the family's honor. As she screamed for help one neighbor banged on the front door, but the father emerged claiming that his daughter was having a fit. When police arrived they found a trail of blood from the front of the house to the back door and then to the hallway where Miss Nazir's body was slumped in a pool of blood. [...] She received 18 stab wounds and three cuts to her throat.[117]

It is speculated that Samaira Nazir's two daughers, ages 2 and 4, were made to watch the murder as a warning. Since then, her brother has been found guilty of murder and her cousin has been convicted for his part in the murder; they are in custody until

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[116] Ibid.

[117] "Sister Stabbed to Death for Loving the Wrong Man," The Times, 17 June 2006. 2006 Times Newspapers Ltd.

sentencing. Her father was also charged with murder, but he fled to Pakistan. Charges against her mother were later dropped.

Rape: The Cases of Shazia Khalid & Mukhtar Mai

On January 2, 2005, Shazia Khalid, a Pakistani medical doctor and employee of Pakistand Petroleum Limited (PPL) was raped. She was attacked and victimized by a masked intruder, and left blindfolded, bound and severely injured after her ordeal. Rather than taking Shazia Khalid to a medical hospital for treatment, "officials were said to have drugged her into unconsciousness for thee days to keep her quiet and then shipped her to a psychiatric hospital in Karachi."[118] Amnesty International states that "the local police were reportedly unable to obtain testimony from Dr. Shazia Khalid until 9 January and she was allegedly not given a medical examination for several days after the rape."[119] It is alleged that after this, she was held at a house for a period of time in Karachi, under the guise of protection, yet she was not allowed to access doctors, lawyers or other visitors of her choosing. Following this, her case was directed to a "Judicial Tribunal", which consisted of a single judge, for investigation. The result of her rape and subsequent treatment by state officials was a violent uprising by a tribe in the Baluchistan province of Pakistan, which disrupted the oil trade for several weeks. The response by President Pervez Musharraf was that the accused officer was not guilty.

In an interview with the BBC, Shazia Khalid shared that she has been threatened many times since she was raped.

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[118] http://en.wikipedia.org/wiki/Shazia_Khalid accessed June 26, 2006.
[119] http://web.amnesty.org/library/print/ENGASA330022005 accessed June 26, 2006.

> I cannot tell you how many times I was threatened. My life was made impossible. I am still terrified. My whole career was destroyed, as was my husband's. That was why we left the country. Instead of getting justice, I was hounded out of Pakistan. I never wanted to leave Pakistan, but had no choice.[120]

Dr. Khalid left Pakistan on March 18, 2005, for London and applied to Canada for asylum. Her application was declined. It is unknown where and how Shazia Khalid is living today.

Mukhtar Mai, also known around the world as Mukhtaran Bibi, was raped in 2002 by a gang of men, allegedly as a means to exact revenge upon her family as a result of her brother Shakoor, who was "suspected and accused by the Mastoi of committing *ziadti* (rape, sodomy or illegal sex) or *zina* (fornication or adultery) with a Mastoi girl, Salma (Mastoi), also known as Nasim."[121] There exist several versions. According to the text of the case judgment, her attack occurred as follows:

> She was caught hold by Abdul Khaliq son of Imam Bakhsh, Caste Mastoi, from her right hand, which she got released by force. [...] she was forcibly taken into a Kotha by the four appellants, namely Abdul Kaliq, who was armed with 30 bore pistol, Allah Ditta (both sons of Imam Baksh), Fayyaz Husain son of Karim Bksh and Ghulam Farid son of Mahmood, all Mastoi by Caste and she was subjected to Zina-bil-jabar by all of them turn by turn during the course of which she remained crying.
> Thereafter, she came out nude and called her father Ghulam Farid. The occurrence was stated to have been witnessed by Ghulam Nabi son of Bahar Khan and Altaf Hussain son of Bahadur Ali, Jatoi by Caste [...][122]

The rape was allegedly on the orders of a tribal council.[123]

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[120] http://www.hindustantimes.com/news/7598_1416377,000500020000.htm accessed June 26, 2006.
[121] http://en.wikipedia.org/wiki/Mukhtar_Mai accessed June 26, 2006.
[122] Text of Meerwala Case Judgment, p. 3 of 15. http://www.dawn.com/2005/03/10/nat11.htm Accessed June 24, 2006.
[123] "Rape victim demands her 'freedom,'" BBC News, 2005/06/14. http://news.bbc.co.uk/go/pr/fr/-/2/hi/south_asia/4092868.stm Accessed June 24, 2006.

The case was put to Anti-Terrorism Court in 2002 and her six attackers were sentenced to death on August 31, 2002. According to the monitoring of Wikipedia, on March 3, 2005, five of the six men sentenced to death were acquitted on appeal by the Lahore High Court,[124] the highest court of the Punjab province. The Pakistan government decided to appeal[125] the acquittal, and Mukhtar Mai asked the court[126] not to release them. The five men then remained in detention under a law that provides for a 90-day detention without charges. On June 6, 2005, the Lahore court ruled that the five men could be released. This prompted the intervention of the Supreme Court, which suspended the acquittal of the five men, as well as the 2002 acquittal of the eight others. This meant that all 14 men would be retried in the Supreme Court. The government is fighting an appeal in the Supreme Court against the overturning in March of the convictions of five men sentenced to death for the gang rape of Ms. Mai.

To add to the controversy surrounding this case, Mukhtar Mai has been kept "under virtual house arrest"[127] for much of the time since her attack and the court proceedings. Non-governmental organizations and activists claim that the state restriction of her mobility is indicative of the pressure the government is putting on her in this case. Mukhtar Mai has told BBC reporters that she is on an Exit Control List (ECL), which stops her leaving the country. She has also said that she "want[s]

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[124] http://news.bbc.co.uk/2/hi/south_aisa/4314153.stm
[125] http://www.dawn.com/2005/03/06/top3.htm
[126] http://www.parktribune.com/news/index.php?id+96680
[127] "Rape victim demands her 'freedom,'" BBC News, 2005/06/14. http://news.bbc.co.uk/go/pr/fr/-/2/hi/south_asia/4092868.stm Accessed June 24, 2006.

to live like a free citizen, [and that she] should be allowed to move freely and [her] name should be taken out of the ECL."[128] On October 31, 2006, her memoir will be released in the U.S. for the first time. It is titled, *"In the Name of Honor: A Memoir."*

Case Study: The Veil

The issue of the veil is a phenomenon that touches many important issues regarding women's rights, and necessitates detailed consideration due also to the historical and societal context that affected its practice. When one speaks of women in the Muslim world, one effectively groups together over half a billion individuals who come from "vastly different lands, climates, cultures, societies, economies and [political environments]."[129] Often, when these women are mentioned, the image that is evoked is a homogenous, rather nondescript, veiled entity with neither unique visible attributes nor voice enough to represent any sort of differentiation among them. Perhaps one of the more frequent examples is of the Iranian woman. In order to examine effectively the veiled Iranian woman, one must search beyond commonly held assumptions to discern not only why the veil is and has been worn by women in the Middle East throughout history, but also what it represents both for those who don it and for those who look to it for symbolic meaning.

The temptation, and frequent belief, is that veiling always is forced upon Muslim women, who are subjected to the oppressive framework of a faith that deems

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[128] "Rape victim demands her 'freedom,'" BBC News, 2005/06/14. http://news.bbc.co.uk/go/pr/fr/-/2/hi/south_asia/4092868.stm Accessed June 24, 2006.

[129] Mahnaz Afkhami, Ed. *Faith and Freedom: Women's Human Rights in the Muslim World* (Syracuse: Syracuse UP, 1995) 1.

men superior. Yet this is an overly simplistic analysis. Though forced veiling is practiced in part of the Middle East – Khomeini's implementation of a strict dress code being a prime example of this and of a violation of women's rights – the issue is far more complex; debate must not be limited solely to a theme of the victimization of women in the name of Islam. For instance, Yuval-Davis and Anthias identify that women are looked to as being "markers of community boundaries, signifiers of cultural differences and as reproducers both physically and culturally."[130] As such, they garner a specific vulnerability in that they are subjected to boundary policing by a variety of groups within Iranian society. Thus, it becomes imperative to draw a distinction between the symbolic capital attached to women with respect to identity politics and the manner in which women negotiate identities for themselves.

> Policing women's mobility, relations and bodies becomes part of a national project of boundary maintenance. Culture, identity, difference and community are mobilized, making it even more difficult to give feminist accounts of difference that do not become complicit with the uses that masculinist states and identity movements make of women and cultural difference.[131]

It is important to remember that veiling is neither solely nor primarily a religious phenomenon. It is also necessary to address the complex and shifting motivations of veiling.

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[130] (Ed.) Yuval-Davis, Werbner, *Women, Citizenship and Difference.* (215)
[131] (Ed.) Yuval-Davis, Werbner (215).

According to Fatima Mernissi, the "*hijab* is three dimensional,"[132] encompassing the visual, spatial, and the ethical. It exists to mark physical difference between the two sexes of the community as well as to conjure up a specific set of ideas with respect to the division of space such as the 'male' (public) versus the 'female' (private) realm. Other feminists and political scientists disagree with the very notion of the division of space.

> [...] Chantal Mouffe has urged that the private/public distinction can no longer be grasped as corresponding to discrete, separate spheres because both private acts and public performances are framed by 'ethno-political principles'.[133]

To deny the existence of such a spatial divide is to suggest that there exists no allocated space, which can be identified as 'public' or 'private', thus renegotiating previously held conceptions of public participation and citizenship. Essentially, the public-private division can be looked to as being an ever-changing phenomenon. It is "historically and contextually determined, contested and constantly struggled over and redefined."[134] Additionally, it is contingent upon both gender and culture. Certainly, the notion of the public-private dichotomy is one of many contemporary ideals regarding the symbolic politics of the *hijab* but it is important to note that the veil never originated as a marker of spatial boundaries. It seems that the majority of discussions on the origins of veiling remain rooted in one of two overarching themes: cultural traditions and religious adherence to a strict interpretation of Islam. Indeed both are important motivations to consider. One early political thinker, Qasim Amin

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[132] Fatima Mernissi, *Women and Islam: A Historical and Theological Enquiry*. Trans. Mary Jo Lakeland. (Oxford: Basil Blackwell, 1991) 93.
[133] (Ed.) Yuval-Davis 25.
[134] (Ed.) Yuval-Davis 29.

(1865-1908) wrote a book, *The Liberation of Women,* in which he stressed that "the degradation of women in Islamic countries [...] did not have its origin in Islam,"[135] but rather stemmed from absorption of views and customs of peoples of a variety of cultures who has subsequently become Muslims.

Interestingly, it seems that veiling became a tradition within some cultures not to divide sexes, but rather to create a division among class lines. For example, among the Assyrians and Babylonians in the Ancient Orient, "the veil was a symbol of class distinctions."[136] To wear a veil was a right held only by free women; a slave who veiled was liable to be punished. Within the upper groups of society, the custom of veiling spread quickly. A woman who was able to separate herself from the world – be it by possessing servants to do her outside errands, or by simply donning a veil – was regarded by society as possessing a certain degree of privilege and a particular place within the social hierarchy. A woman's ability "to remain apart from public activities was [...] the privilege of the wives of wealthy men"[137] and this type of social segregation was considered desirable.

Thus it is interesting that some of the contemporary discussions on veiling in Iran involve class issues as well. It has been argued that part of the interest in veiling is due to "new patterns of female mobility for an educated generation whose mothers normally would have been bound to the home and neighborhood."[138] Clearly one contributing factor to veiling in the past was that the veil provided a woman with

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[135] Mernissi 174.
[136] Mernissi 39.
[137] Mernissi 176.
[138] Deniz Kandiyoti, "Reflections on the Politics of Gender in Muslim Societies: From Nairobi to Beijing," *Faith and Freedom* (Syracuse: Syracuse UP, 1995) 27.

societal recognition that she was a member of a privileged social class. Her difference was noted on the basis of her economic standing as well as her gender. This issue of class has transcended vast social and political change, remaining a motive still. In the last half of the century, many women throughout the Muslim world have chosen (or have been forced) to veil (even though they had never done so before) in order to enter more easily into the workforce and to succeed in an arena characteristically dominated by men. Regardless of their countries of origin or backgrounds, all of these women share a common denominator: they all have tended to be relatively educated and have come from middle to upper class backgrounds. This has provided them with the opportunity to become more aware and interested in increasing their level of engagement within the public sphere and politics. Conversely, there also has been a movement by Muslim women of lower classes who have chosen to veil "as reaction against [those members of] the upper classes of society with their westernized way of life."[139]

> While at the beginning of the emancipation development the struggle against the veil and against traditional Islamic dress was a main point, today in several Islamic countries, retrogressive trends can be observed.[140]

Hence, it is clear that, throughout history, the *hijab* has been an interesting and symbolic concept within Muslim society. According to Mernissi "reducing or assimilating this concept to a scrap of cloth that men have imposed upon women [with which] to veil them [...], is truly to impoverish the term."[141] It is imperative to

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[139] Mernissi 175.
[140] Mernissi 175.
[141] Mernissi 95.

consider that the motivations behind veiling are both inherently individualistic and highly complex.

Much of today's debate on veiling revolves around specific conceptions of Islam. Religion is the language of fundamentalists like Khomeini, who force the veil upon women, all in the name of scriptural adherence and the creation of a truly "Islamic state." Yet the sad irony is that many people, both oppressors and oppressed alike, actually have never critically examined for themselves what exactly is stated within the Qur'an and the Hadith. How can people govern their behavior according to directions that they have never read for themselves? It is imperative to look to the fundamental texts in order to understand more clearly what Islam says with respect to women and their position within Muslim society. As was evidenced in the analysis of the fundamental texts within the second chapter of this thesis, the scripture is a book of ethics, not laws and both the *suras* of the Qur'an and the individual traditions of the Prophet have been interpreted in many different ways by both modernists and traditionalists. In the context of veiling, there is no explicit statement in either the Qur'an or the Hadith that says that women must be veiled according to the word of God. Veiling is mentioned but, arguably, in contexts that could be looked to as being culturally specific, not religiously binding. Rather, it can be inferred through the underpinning values of modesty, morality, and ethics that all Muslims should act accordingly but there is no clear definition of what should or should not be done so as to ensure proper behavior. Today, the Qur'an and Hadith are looked to as a means with which to support some people's claims that all women

should be veiled, remain within the private sphere, and conduct themselves in such ways as to suggest an inherent inferiority to their male counterparts.

It is within the context of the notion of divided space (the public versus the private spheres) that the phenomenon of veiling is perhaps most fascinating. As early as the second half of the nineteenth century, the veil "became [a] symbol of the exclusion of women from public life."[142]

> The restriction of women to the domestic area, which grew out of the use of the veil and the curtain, and their exclusion from public life, which was paralleled by increasing limitations on their opportunities for education, proved to have unfavorable consequences for the social position of women and for the development of the whole of society in the Islamic countries in the course of later centuries.[143]

It seems that a tradition, once embraced by women as a means to differentiate themselves from others, had evolved into a practice that came to symbolize segregation solely on the basis of sex, rather than along class lines. Inherent to the concept of veiling for the purpose of segregation are two themes: a particular notion of sexuality and a subsequent division of space. The *hijab* is a metaphor for the Arabic word, *hudud*, boundaries that separate and create order. Some thinkers believe that this concept reflects a specific division of labor and a specific conception of society and power.

> The territoriality of Muslim sexuality sets ranks, tasks and authority patterns. Spatially confined, the woman was taken care of materially by the man who possessed her, in exchange for her total obedience and her sexual and reproductive services. The whole system was organized so that the Muslim *umma* was actually a society of male citizens who possessed among other things the female half of the population.[144]

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[142] Wiebke Walther, *Woman in Islam* (Montclair: Abner Schram, 1981) 173.
[143] Walther 40.
[144] Mernissi, *Beyond the Veil*, 103.

According to Qasim Amin, this spatial division and notion of territoriality is a result of the belief that women are better able to control their sexual impulses than men. Ironically, then, sexual segregation appears to have evolved as a device to protect men, not women. Amin posits that the whole Muslim organization of social interactions and configurations can be understood in terms of the woman's *qaid* power. Essentially, a divided social order is imposed upon the community as a means to subjugate women's sexual power, thereby neutralizing its disruptive effects on both men's piety and the stability of society as a whole.

The seclusion of women, which to Western eyes is a source of oppression based on perceived weakness of inferiority, actually is founded on the premise that men are the weaker sex, at least in the context of resisting sexual temptation. In addition to concealing a woman's blatant sexuality, the veil also serves as a spatial identifier: it "refers to the harem [a space that was traditionally private and forbidden to men] and identifies the woman trespassing beyond her assigned private space."[145] She is labeled as an outsider or as one that does not belong where she has dared to venture. Traditionally, only necessity could justify a woman's presence in public space, as women in male spaces were considered both provocative and offensive. The situation is exacerbated if the woman in question in unveiled. Women who enter the public realm without *hijab* are seen as being out of bounds, or beyond the norm. On the one hand, they are considered defenceless because they have left the boundaries of the private realm to venture into areas that are not theirs. On the other

[145] Fatima Mernissi, "Arab Women's Rights and the Muslim State in the Twenty-First Century: Reflections on Islam as Religion and State," *Faith and Freedom* (Syracuse: Syracuse UP, 1995) 42.

hand, they are looked to as being explicitly sexual, dangerous creatures, motivated to trespass into male spaces as a means to tempt god-fearing men to commit shameful and forbidden acts of *zina*.

Modernity has proven to make the situation all the more complex. Boundaries between the sexes have become unclear, demanding adjustments and concession from both. Now a new generation of educated and ambitious women is demanding "the renunciation of the ideal of the homogenous city, carefully divided into two hierarchical spaces, where only one sex manages politics and decision-making."[146] Modernization demands the breakdown of the traditional sexual segregation in order to use women in the production process.

Ironically, modernity has brought to the non-Western world both technological enlightenment and cultural opposition. The Muslim world wants the benefits of modernity, but does not want to pay the proverbial price. The West is commonly perceived as a modern, technologically advanced world in which morality and family values are no longer a priority. Yet, the political, the social and the economic facets of a society are all inextricably connected, and as such modernity is a package that offers adherents both advantages and disadvantages. Some Iranians, in grappling with this dilemma, have posed questions such as: Why imitate everything Western? Why not try something of our own? As documented by Geraldine Brooks, an American feminist interested in women in the Muslim world, many contemporary women now choose to don the veil in reaction to the ever-increasing influences of modernity and the West.

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[146] Mernissi, *Democracy and Freedom* 156.

However, veiling today is not always a choice. One strong reaction to the West has been the rise in Islamic fundamentalists. This group is comprised of the extreme faction of the Islamic community, whose image is characterized by strict religious adherence and even violence. The objective is to capture political power in the name of Islam and the one common denominator among all factions of this ideology is that the first action undertaken is to visibly oppress the women of the community. It seems that the subordination of women is one of the first steps taken by fundamentalists in their quest to increase perceived religious ideals. Fundamentalists believe that society can be improved to levels of past greatness by means of a strict adherence to Islamic law. They propound that it is the behavior of the community that requires correction, not the standard of behavior, itself (i.e. the Qur'an and the Hadith). Even though the scriptural framework contains no revelation conducive to the mistreatment / abuse of women and their removal from public space, this is exactly what is preached and encouraged by fundamentalists. The pressure on women has been intense.

Today the situation remains complex. In a 2003 report published in *The Economist*, it was suggested that if one were to ask any Iranian woman about her position within society, she would reply that "the petty restrictions of life have been relaxed in the past few years,"[147] allowing for a freer interpretation of the dress code and a reduction in fierce policing regarding moral issues. However, a follow-up interview with some urban-based Iranian women yielded somewhat disparaging

[147] "The Trials of Everyday Life," *Economist*, Vol. 366 Issue 8307, January 18, 2003, p. 7.

results. It seems that there has emerged throughout the Islamic Republic a strong hybrid of old and new – one forced, the other desired.

> Most women will not be wearing the all-over covering that ensures female modesty and comes in all colors of the model-T Ford. Here, jeans many nowadays protrude from below women's coats, not the black trousers that peep out from beneath the almost all-encompassing *chador*, the shapeless uniform still worn in most other places. And a colored headscarf, not too bright but perhaps patterned, may be worn; make-up, too. Cosmetic surgery is also in fashion. It is not unusual to see young women with surgical tape stuck to their face[s] as they gaze out from their head-covering *maqnaeh*.[148]

In discussion, one woman described the youth of today as "lucky," as she remembers firsthand the experience of young women in the early 1980s in Iran. It is her assertion that the dress code was enforced much more strictly, and thus it was unheard of even to be seen in public with a member of the opposite sex with whom the correct familial ties were not shared. If one were to ask a young Iranian female today, though, she may not feel so lucky. According to "Negah", who lives in Tehran, the morals police remain intrusive, though perhaps less blatantly so that two decades ago.

> She has had one run-in with the [morals police] for being out with a boy [and failing to adhere to the dress code], which led to her arrest for 24 hours and a sentence of a fine or 90 lashes. She paid the fine.[149]

According to a report aired by the BBC, though the Iranian government's dress code states that women must wear long, loose-fitting black coats, some recently "have been wearing shorter, lighter colored coats that fall to the knee."[150] In response, there were protests led by conservatives and subsequent crackdowns against women

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[148] Economist 7.
[149] Economist 7.
[150] "Iran: Tightening of Dress Code for Women," *Women's International Network News* (Vol. 29 Issue 3, Summer 2003) 49.

who were considered deviants. Thus it appears that the experience of Iranian women throughout the past two decades can be characterized as being neither uniform nor static. As with many other social variables within the Islamic Republic, women's reaction to the dress code has been relative and largely contingent upon individual social backgrounds and experiences.

Conclusion

According to Nikkie Keddie and Lois Beck, what is special about Islam regarding women's rights is "the degree to which matters relating to women's status have either been legislated by the Qur'an, which believing Muslims regard as the literal Word of God as revealed by the Prophet, or by subsequent legislation derived from interpretations of the Qur'an and the traditional sayings of the Prophet."[151] Thus, in any discussion of human rights, it is imperative to consider what is said within the Qur'an and Hadith and to compare the scripture with the current realities of how women are actually treated within contemporary Islamic society.

[151] *Women in the Muslim World*, ed. Lois Beck and Nikki Keddie (Cambridge: Harvard UP, 1978) 25-26.

Chapter 4: Islamic Thought

Introduction

According to Fazlur Rahman, many observers consider the "the history of Islam in modern times [to be] essentially the history of the Western impact on Muslim society."[152] In this perspective, Islam is conceived as being "a semi-inert mass receiving the destructive blows or the formative influences from the West."[153] This idea of Islamic culture reacting to the social, political, cultural and (initially) technological differences found in countries of 'the West' is supported by many contemporary scholars who, like Barbara Freyer Stowasser, posit that it is the ability of Western influence to permeate broadly – a phenomenon that seems only to increase as a result of the effects of globalization – throughout Islamic society that has proved so challenging for Muslims and their governments.

> The fundamental character of the modern challenge and pervasiveness of the Western influence is … a stark fact. The channels through which this influence has come in are legion – the political structure, the administrative and judicial machinery, the army, the press, modern education, the cinema, modern thought, and, above all, the present contacts with Western society.[154]

One development of this reaction has been the emergence of women as a central subject for national and international debate. As Leila Ahmed suggests:

> From the start the treatment and status of women were intertwined with other issues … considered critically important to society, including … the need for national advancement and for political, social and cultural reform. From the start the discussion of women and reform was embedded in considerations of

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[152] Rahman, Fazlur, *Islam*, 2nd ed. (Chicago and London: University of Chicago Press, 2002) 212.
[153] Ibid 212.
[154] Stowasser, Barbary Freyer, *Women in the Qu'ran, Traditions and Interpretation* (New York and Oxford: Oxford UP, 1994) 213-214.

> the relative advancement of European societies and the need for Muslim societies to catch up.[155]

This attachment between the status and role of women on the one hand, and the condition of the state on the other, is perpetuated by Islamists today. It has been primarily in areas like family law (i.e. marriage, polygamy and divorce) and relations between genders that have been most contested, as each is touted as a signifier of the relative Islamism of the state.[156] It is for this reason that an examination of some notable Islamic thinkers and their views on the state and women's role within it are of critical importance to a broad understanding of the issues faced by Muslim women both in the past and today.

Indeed, the contemporary political climates of Muslim nations, like Iran, are rife with conflict. The battle between the two opposing faces of Islam, traditionalists and modernizers, wages on. To get to the crux of the matter, one must consider many points on the interpretative spectrum, from the fundamentalism of Khomeini to the feminism of Mernissi to the rationalism of Soroush. Each perspective must legitimize itself *via* reference to the fundamental sources of Islamic law, the Qur'an and Hadith, but due to specific contextual developments and views of society, very different views have been articulated by Islamic thinkers from the end of the nineteenth century until today, and the debate continues. For this reason, this chapter will consider a sampling of some of the more notable thinkers with respect to the nature of the Islamic state and the role and status of Muslim women within it. By no

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[155] Ahmed, Leila, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven & London: Yale UP, 1992) 128.
[156] Ed. By Haddad, Yvonne Yazbeck and Stowasser, Barbara Freyer, *Islamic Law and the Challenges of Modernity* (Walnut Creek, California: AltaMira Press, 2004) 2.

means is this an exhaustive review of contemporary Islamic thought but, I believe, discussion of the following minds will contribute effectively to the outcome of this thesis, which is to consider the position of women according to Islamic Law within the Islamic Republic of Iran.

An Overview of Muslim Thought

One of the first instances of the subject of women appearing in writing was in the articles and legal rulings of the Egyptian Muhammad Abduh. Qasim Amin carried the subject after Abduh's death, focusing on women as one controllable segment of society that could be changed (i.e. through education and dress) as a means to address Islam's alleged comparative inferiority to the West. Ideas such as Abduh's and Amin's clearly garnered a response. With the advent of Hasan al-Banna's Muslim Brotherhood and Mawlana Abul A'la Mawdudi's *Jama'at-i-Islam*, the political movements of Islamism were born. Over the years, notable Islamists like Sayyid Qutb posited strong views on the Islamic state and women's roles in it. Views like those of Qutb continued to elicit responses from Islamic feminists, like Fatima Mernissi, and others who advocate modernist interpretations of Islam. So the debate between modernist, traditionalist and fundamentalist Islam continues.

Perhaps the most famous Islamist to date has been Ayatollah Khomeini, the fundamentalist Shi'i leader who took Iran through its Islamic Revolution – a social movement with global implications. It was a movement that created much room for discussion and debate regarding the contemporary vision for an Islamic state and how it can be manifested to exist harmoniously (or not) with an increasingly

'Westernized' world. Will Islam and 'Western' concepts, like democracy, for example, ever be considered by Muslims as compatible? Will women ever garner a sense of gender equality as is considered ideal in 'the West'? It is in order to examine these and other questions like them that an examination of contemporary rationalist thinkers like Abdolkarim Soroush becomes important.

Muhammad Abduh

Known as the 'father of Islamic modernism', Egyptian scholar and jurist Muhammad Abduh was "among the most influential thinkers on reform with respect to women."[157] Considered to have been the thinker who laid the foundation for the modern notions of reform, "his contribution lay in crafting – or perhaps more accurately reviving – a theology that was necessary for restructuring and rehabilitating legal ideas."[158] Egypt was undergoing significant change during Abduh's lifetime, being influenced by Western ideas, values and technologies at an unprecedented degree and speed. Abduh soon came to the realization that traditional notions and interpretations of Islam would be unable to address contemporary challenges. He believed that an Islamic revival was imperative if Egypt was to address modern societal issues. Referring to the life of the Prophet Muhammad, Abduh believed that Muhammad had created a just and ethical society, the Islamic ideal, and that the Prophet had been able to maintain a standard of virtuous character within his society vis-à-vis the implementation and application of rules – set out in the Qur'an and elaborated upon by Muhammad. However, he also identified the

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[157] Ahmed, Leila, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven & London: Yale UP, 1992) 138.
[158] Hallaq, Wael B, *A History of Islamic Legal Theories* (Cambridge: Cambridge UP, 1997) 212.

dramatic societal changes that had occurred since the time of the Prophet. It was no longer possible for a modern Islamic society to address the changes of modernity with only a literal interpretation of Islam in hand. Thus, Abduh's challenge was to develop a theoretical framework which could reconcile the basic tenets of Islam with the unfamiliar and continuing challenges of contemporary life.

His point of departure was to establish a theoretical separation of human reason and divine revelation, as he believed that sound reason could never stand in opposition to God's will; his belief was that if there seemed to be "a contradiction or conflict between the two, it [was] because one or the other has been misunderstood."[159] He focused on *ijtihad* and embarked upon a unique exercise of legal reasoning that came to be called 'patching': he combined "various strands of traditional *fiqh* [from various schools of law] to find new solutions to new societal problems."[160] His hope was that he could develop "a 'new *fiqh*' that would modernize the laws within established parameters for the purposes of the emerging nation-state."[161]

As Abduh laid a theoretical foundation for reform, he came to believe that, in order to establish an ideal Islamic society, like that of the Prophet, he would have to address the rights and roles of women.

> In his call for the moral rebirth of Islamic society ... Abduh identified women's liberation from male oppression (the latter sanctioned by polygamy and divorce laws of medieval *fiqh* formulations) as an essential precondition

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[159] Ibid 212.
[160] Ed. Haddad, Yvonne Yazbeck, and Stowasser, Barbara Freyer, *Islamic Law and the Challenges of Modernity* (Walnut Creek, California: AltaMira Press, 2004) 6-7.
[161] Ibid 6-7.

> for the building of a virtuous society. Abduh and his followers emphasized women's full human dignity as well…[162]

With respect to a woman's full human dignity, Abduh was "probably the first to make the argument, still made by Muslim feminists today, that it was Islam and not, as Europeans claimed, the West, that first recognized the full and equal humanity of women."[163] He referred to the Prophet's innovative establishment of rights for women – as believers, as members of the family unit, and as members of Islamic society – that afforded women a much improved existence than that which they had suffered through in pre-Islamic Arabia. In Adbuh's own words:

> Anyone who knows how all nations before Islam gave preference to the man, and made the woman a mere chattel and plaything of the man, and how some religions give precedence to the man simply because he is a man and she is a woman, and how some people consider the woman as incapable of religious responsibility and as possessing no immortal soul – anyone who knows all this, can appreciate its true value this Islamic reform in the belief of the nations and the treatment of women.[164]

Abduh looks to the initially reformist nature of Islam, when first established by Muhammad, and embraces its ability to improve the lot of women, advocating that this affect be transferred to modern Egypt. Therefore, rather than focus on the responsibilities of women (which seem to be the focus of traditionalists and fundamentalists), as outlined in the Qur'an and Hadith, one should look to the net positive impact that Islam had on the lives of women in the seventh century and revive the underlying sentiment of progress as a means to create a more virtuous

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[162] Stowasser, Barbara Freyer, *Women in the Qur'an, Traditions and Interpretation* (New York and Oxford: Oxford UP, 1994) 6.
[163] Ahmed, Leila, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven and London: Yale UP, 1992) 139.
[164] I cite here Charles C Adams' concise synopsis of Abduh's views: *Islam and Modernism in Egypt* 152.

society for modern Egypt. According to Barbara Stowasser, "his main goal was to 'renew' Muslim morality and reform the traditional social structures of his day ... by way of a return to the pristine and dynamic faith and morality of Islam's first generations."[165]

An area of specific focus and criticism for Abduh was polygamy. He wrote passionately about "male tyranny and lasciviousness, female exploitation and oppression, the corruption of the new generation, all features of the nineteenth century reality of polygamy gone wrong."[166] Though when it was instituted, polygamy arguably was a means with which to provide for those women (widows and unmarried women) who otherwise had no recourse for protection and care, Abduh believed that, in a contemporary context, it was "devoid of justice and humanity and was no longer beneficial to the community's welfare."[167] He looked to the Qur'an to support his position that a man, being unable to treat more than one wife equitably, should marry only once.

> You will not be able to be equitable/ between your wives, be you ever so eager;/ yet do not be altogether partial/ so that you leave her as it were suspended./
> (IV: 91)

He believed fervently that the Qur'anic ideal was monogamy, so he lobbied strongly for the abolition of polygamy altogether. His position was that the present regulations of Islam with respect to issues like polygamy did not belong to the

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[165] Stowasser, Barbara Freyer, *Women in the Qur'an, Traditions and Interpretation* (New York and Oxford: Oxford UP, 1994) 34.
[166] Ibid 121.
[167] Adams, Charles C, *Islam and Modernism in Egypt: A Study of the Modern Reform Movement Inaugurated by Muhammad 'Abduh* (New York: Russell & Russell, 1933) 230.

essentials of Islam and, subsequently, were subject to modification according to contemporary circumstances.[168]

Qasim Amin

Often considered the 'father of Islamic feminism', Qasim Amin, the student of Muhammad Abduh, was a "French-educated, pro-Western, Egyptian journalist, lawyer and politician."[169] He followed in the footsteps of his teacher with respect to arguments for the provision of education to Egyptian women and for the reformation of laws regarding polygamy and divorce. His uniqueness – and, thus, his contribution to the discourse of modern Islamic reform – stems from the controversy surrounding his book, *Tahrir Al-Mar'a* (The Liberation of Women), published in 1899. As Leila Ahmed outlines, debate ensued but not for the reasons one may have thought:

> Analyses of the debate and of the barrage of opposition the book provoked have generally assumed that it was the radicalness of Amin's proposals with respect to women that cause the furore. Yet the principal substantive recommendations that Amin advocated for women – giving them a primary school education and reforming the laws on polygamy and divorce – could scarcely be described as innovatory.[170]

Indeed, matters of both education and polygamy had been argued publicly in the 1870s and 1880s without provoking public outcry. What, then, was the reason for debate? It appears to have been two-fold: "first, the symbolic reform – the abolition of the veil – that he passionately urged and, second, the reforms … that he urged

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[168] Ibid 230.
[169] Stowasser, Barbara Freyer, *Women in the Qur'an, Traditions and Interpretation* (New York and Oxford: Oxford UP, 1994) 127.
[170] Ahmed, Leila, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven & London: Yale UP, 1992) 144.

upon society as a whole and that he contended [were] essential for the Egyptian nation … to make."[171] As mentioned in detail in the previous chapter, Amin posited that the veil represents a spatial division that signifies a belief that women, more so than men, are able to keep their sexual impulses in check. Essentially, Amin suggested that a divided social order was imposed upon Muslim society as a means of controlling women's sexual influence over men, who were less able to control themselves and maintain the Muslim ideals of a just and virtuous society. (Please refer to Chapter 3 for an elaborated discussion of this issue.) Leila Ahmed provides a succinct summary of this matter:

> Amin's work has traditionally been regarded as marking the beginning of feminism in Arab culture. Its publication and the ensuing debate certainly constitute an important moment in the history of Arab women: the first battle of the veil to agitate the Arab press. The battle inaugurated a new discourse in which the veil came to comprehend significations far broader than merely the position of women. Its connotations now encompassed issues of class and culture – the widening cultural gulf between the different classes in society and the interconnected conflict between the culture of the colonizers and that of the colonized.[172]

Yet the veil, though contentious, was but one piece of an overall package of reform that Amin advocated.

With respect to Amin's broad vision for reform, as articulated in his book, it was clear that all his recommendations were based upon what he considered to be ideals of Western society. He considered many aspects of Muslim society to be 'backward' and wished it would adhere to a more successful path, as modeled by 'the West'. Interestingly, he included as part of this a complete reform of the status,

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[171] Ahmed, Leila, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven & London: Yale UP, 1992) 145.
[172] Ibid 154.

roles and rights of women. Adopting a long-term approach to change, Amin believed that "the grown man is none other than his mother shaped him in childhood."[173] This meant that for modern Muslim society to succeed, its women would have to undergo significant reform so that they would be able to raise a modern-minded and successful next generation.

Interesting to note is that, though his work clearly advocated for women's reform, the majority of Amin's criticism of Egyptian society is focused at Egyptian women, themselves. He describes in detail, and with contempt, both their moral qualities and physical habits, so as to justify the need for reform. Essentially, he suggested that Egyptian women are so inept and unrefined that reform is imperative for the betterment of Muslim society. For example, Amin provides the following beliefs about Egyptian women:

> Most Egyptian women are not in the habit of combing their hair everyday … nor do they bathe more than once a week. They do not know how to use a tooth brush and do not attend to what is attractive in clothing, though their attractiveness and cleanliness strongly influence men's inclinations. They do not know how to rouse desire in their husband, nor how to retain his desire or to increase it … This is because the ignorant woman does not understand inner feelings and the promptings of attraction and aversion … If she tries to rouse a man, she will usually have the opposite effect.[174]

Though Amin's work is undeniably of benefit to the cause of women, it is also clearly insulting to women, as evidenced by his scathing reports about them in his book. It seems that his primary motivation to initiate reform stems from his perceptions of Western superiority. It is out of an apparent desire to fill the gap

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[173] Ahmed, Leila, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven & London: Yale UP, 1992) 156.
[174] Ibid 157.

between the sizeable progress of Western society and his perception of a lack of progress of Muslim society that he prescribes a complete list of reforms intended to change the lives of Muslim women to make them more similar to those of Western women. As Barbara Stowasser suggests, "Amin's call that the bare-faced Muslim woman be given access to the outside world in order to acquire knowledge of 'what is real' … bear[s] a close relationship to the history of European imperialism in the Islamic world."[175]

The Muslim Brotherhood: Hasan al-Banna & Sayyid Qutb

Radical Islamist organizations also have played an important role in shaping the political and social discourse in the Islamic world. One of the most influential organizations was the *Ikhwan al-Muslimun* (Muslim Brotherhood), which was founded in the 1928 by the Islamist, Hasan al-Banna. According to John Esposito, the Muslim Brotherhood "embodied a growing ambivalence toward the penetration of Western culture, the threat of secular nationalism, and the continued political presence of Western imperialism."[176] Al-Banna asserted that the purpose of the Muslim Brotherhood was not political, but rather religious. In reaction to the moral laxity of British ruled Egypt in the post World War I era, al-Banna declared:

> My brothers, you are not a benevolent society, nor a political party, nor a local organization having political purpose. Rather you are a new soul in the heart of this nation to give light by means of the Qur'an … to destroy the darkness of materialism through knowing God.[177]

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[175] Stowasser, Barbara Freyer, *Women in the Qur'an, Traditions and Interpretation* (New York and Oxford: Oxford UP, 1994) 128.
[176] Esposito, John, *The Islamic Threat: Myth or Reality?* 3rd ed. (New York: Oxford UP, 1999) 66.
[177] Ruthven, Malise, *A Fury for God: The Islamist Attack on America* (London: Granata Books, 2002) 74.

In the beginning, the Muslim Brotherhood served as a reform movement which advocated in general an increase in morality both individually and across society as a whole. Over time, however, it began to support violence as a means of accomplishing its goals. The organization grew dramatically in size and became politically and socially active. Its members believed that all of society's problems were the result of a deviation from the ideal vision of the Islam of the seventh century. Believing that their cause could not be encapsulated within geographical borders, the Muslim Brotherhood began to see itself as a community which was defined by the framework established by Islamic Law.[178]

Like Muhammad Abduh, Hasan al-Banna began to develop his theoretical framework in order to reconcile the challenges of modernity with the fundamentals of religion: "The views of the [Muslim Brotherhood] clearly stemmed from the ideas of ... Abduh. Like those nationalists of the previous century, the [Brotherhood] preached the defense of the faith through moral purification and internal reform..."[179] His vision certainly departed from that of Abduh with respect to his feelings about the West. Whereas Abduh's reforms were intended to navigate Egyptian society through the challenges posed by modernity, Al-Banna's were intended to reject modernity, as represented by 'the West', altogether.

> His society tried to interpret the Qur'an to meet the spirit of the new age, but also to unify the Islamic nations, raise the standard of living, achieve a higher

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[178] Hourani, Albert, *Arabic Thought in the Liberal Age, 1798-1939* (Cambridge: Cambridge UP, 1983) 360.
[179] Ahmed, Leila, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven & London: Yale UP, 1992) 193.

> level of social justice, fight against literacy and poverty, and liberate Muslim lands from foreign domination…[180]

Al-Banna advocated "resistance to and rejection of external encroachment; indeed, internal reform and rearmament were necessary to the successful rejection of external, Western encroachment."[181] According to al-Banna and the Muslim Brotherhood, the wrongs and problems of society were in no way to be handled as challenges that develop as part of an overall package of modernity; instead, all challenges and wrongs and problems that Muslim society was dealing with could be remedied by a strict interpretation of Islam, as was the case in the seventh century.

A strict adherence to and a traditional interpretation of Islamic Law certainly impacted the position of women within society, yet the undeniable changes in society (from the time of the Prophet until the time of Muslim Brotherhood) resulted in some unique and arguably 'un-Islamic' interpretations and practices. For example, with respect to the education of women, the Muslim Brotherhood was unable to deny the right of women for basic education, as advocated by Muhammad Abduh and Qasim Amin. The latter's reforms had already resulted in primary education for women being the norm. What the Muslim Brotherhood did do, however, was to contextualize a woman's education and to limit its value within a broader perspective of her role according to Islamic Law. The Muslim Brotherhood stated that a woman's education was as important as a man's, but supported the claim by saying that this was so that she could better fulfill her duties as a wife and a mother. It was accepted that women could study any subject of interest to them (so long as she did

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[180] Armstrong, Karen, *Islam: A Short History* (New York: Random House, 2000) 155-156.
[181] Ibid 193.

so in accordance with other 'Islamic' rules regarding dress and social interaction); the matter was then if and, if so, how she would be allowed to make use of her education.

> The society took the view that Islam forbade women no subject of study: a woman might be "a merchant, a doctor, or a lawyer" or anything else that brought licit gain, as long as she was rigorously decorous in behavior and dress. Though permitted, a profession, or even an education, was not necessarily the most desirable goal for a woman, whose real job was the home and the family.[182]

For example, according to a successor of Hasan al-Banna, Ismail Hudaybi, a woman's position was first and foremost in the home. If, somehow, she managed to find a small amount of time for herself, she could then acquire and make use of an education.

> The woman's natural place is in the home, but if she finds that after doing her duty in the home she has time, she can use part of it in the service of society, on condition that this is done within the legal limits which preserve her dignity and morality. I remember I left my daughters freedom to choose the kind of education which fit them. The elder entered the faculty of medicine, is now a doctor and practices professionally. The second is a graduate of the faculty of science and is now a teacher in the faculty. Both are married and I hope that they have found harmony between their homes and their jobs.[183]

On the one hand, Hudaybi's thinking sounds almost progressive: that family is important and careers, though allowed, must be made to balance with a woman's family responsibilities as a wife and a mother. However, is one considers the issue within a modern context, certainly it seems monumentally unfair that a Muslim woman who studies to become a doctor or other professional or even a general

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[182] Ahmed, Leila, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven & London: Yale UP, 1992) 194-195.
[183] As cited in: Ahmed, Leila, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven & London: Yale UP, 1992) 195.

member of the workforce should be directed to put her own aspiration aside and to focus primarily on the family (a responsibility she may or may not desire), for the simple fact that she is female.

Another successor of Hasan al-Banna was Sayyid Qutb, who became the "chief ideologue of the Muslim Brotherhood in Nasser's Egypt."[184] In addition to the work for which he is best known, *Ma'alim fi al Tariq* (commonly translated as 'Signposts' or 'Milestones'), which continues to serve as the major theoretical work of Islamists, he wrote a book called *Social Justice in Islam* in 1949, which reveals, in part, his attitude towards the position of women within society. According to William E. Shepard, Qutb believed that, for the betterment of the nation and so that it could be transformed to an 'Islamic state', women would have to adopt and adhere to 'Islamic' values.[185] The notion of the 'Western' woman was made villainous and rejected, and women were told that such reforms (i.e. towards 'Westernization') were contributing to the deterioration of the Islamic society. Consequently, Muslim women had a responsibility to live according to 'Islamic' ideals, primarily within the private sphere. According to Ahmed Mousalli, Qutb's notion of private versus public space was one in which the domains for men and women were very clearly defined. A woman's place was within the private sphere, where her actions were overseen by men, who controlled also the public sphere.[186]

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[184] Haddad, Yvonne Yazbeck and Stowasser, Barbara Freyer, *Islamic Law and the Challenges of Modernity* (Walnut Creek, California: AltaMira Press, 2004) 10.
[185] Shepard, William, E, *Sayyid Qutb and Islamic Activism: A Translation and Critical Analysis of Social Justice in Islam* (Leiden: E J Brill, 1996), p. xvii.
[186] Mousalli, Ahmed S, *Radical Islamic Fundamentalism: The Ideological and Political Discourse of Sayyid Qutb* (Beirut: American University of Beirut, 1992) 54.

Mawlana Abul A'la Mawdudi & *Jama'at-i-Islami* (Islamic Association, or JI)

Like the Muslim Brotherhood, the Islamic Association, founded by Mawdudi in 1941, was a highly disciplined and revolutionary organization, intended to oppose foreign rule and to create an 'Islamic state'. Like all Islamists, Mawdudi looked back to the time of the Prophet for solutions to contemporary problems. He became convinced that Muslims had become exposed to *jahiliyyah* (a period of ignorance) in which they had been mesmerized by Westernization. His response to this was to "present the Islamic way of life in a reasoned, argued, demonstrated, and systematic fashion"[187] as an alternative to the influences of Westernization. However, he did not see a problem with the coexistence of Islam and modern scientific thought. Mawdudi asserted that once science, a value-neutral subject, became infused with Islamic ethics, it would readily turn into an Islamic scientific corpus. Therefore, in this case, it was not modernization with which Islamists held contention, but rather Western manifestations of it. His "efforts were aimed primarily at the leadership of Muslim India, at its educated and intellectually inclined segments, not at the common man,"[188] as these elites could effect change. Mawdudi was convinced that "the proper observance of Islamic norms, a pre-requisite to belonging to the [Islamic Association], was a guarantee of personal integrity."[189] This proper observance of Islamic norms would predicate the establishment of a true Islamic state, or what he called a 'theodemocracy.'

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[187] Adams, Charles J, "Mawdudi and the Islamic State," *Voices of Resurgent Islam* Ed. John Esposito (New York: Oxford UP, 1983) 101.
[188] Ibid.
[189] Ruthven, Malise, *A Fury for God: The Islamist Attack on America* (London: Granata Books, 2002) 69.

Mawdudi's views, with respect to women and their role within his 'theodemocracy,' are best captured in his book, *Purdah and the Status of Women in Islam*. His beliefs about the position of women center on their role within the family, a unit which Mawdudi felt was the building block of 'Islamic' society. Thus, a woman belonged in the private sphere, operating within a family unit as a wife and a mother. This seclusion of women in private space was not enough, though, for Mawdudi also payed very close attention to the matter of the veil. According to his book, women needed to be secluded completely from men and their public spaces; if travel into public space was unavoidable, a woman had to maintain the seclusion, if only symbolically, by being veiled.[190] Mawdudi's reason for this pertained to the notion of a woman's sexual power over men, as explained by Qasim Amin, who propounded that the seclusion of women is maintained, in fact, for the protection of men, who are less able to control their sexual impulses. Mawdudi identifies un-secluded and un-veiled women as encouraging "man's destructive animal nature."[191]

> Mawdudi's Islamic formula to avoid the tragic societal consequences of the secularization of cultures as it had occurred in the West lay in the preventative measure of the established, that is, traditional Islamic social system, of which women's segregation was the main feature.[192]

Unsurprisingly, the family unit is the focal point of the creation of a stable 'Islamic' society, according to Mawdudi. The family unit is a social contract which, in accordance with traditional views of Islam, encourages stability through the

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[190] Mauwdudi, Mawlana Abul A'la, *Purdah and the Status of Women in Islam*, al-Ashari, trans. (Lahore: Islamic Publications Limited, 1972) 83.
[191] Ibid 83.
[192] Stowasser, Barbara Freyer, *Women in the Qur'an, Traditions and Interpretation* (New York and Oxford: Oxford UP, 1994) 127.

legalization of sexual relations, which should prevent illegal sexual relations to occur and deteriorate the moral fiber of the community.

Mawdudi provides a vision of the ideal 'Islamic' society, in which women remain secluded, rarely leaving the home and ensuring they are veiled when they must enter the public domain. Unlike the position of the Muslim Brotherhood, which allowed the education of women, so long as it did not interfere with her primary duties to the family, Mawdudi felt that women needed no training other than that which would assist her in better fulfilling her familial duties as wife and mother.[193] A woman's role was strictly within the family. Conversely, Mawdudi believed that it was the role of men to oversee and protect the honor of Muslim women, while simultaneously protecting themselves from any sexual impropriety.

Fatima Mernissi

In any discussion about modernization and women's issues in contemporary Islamic society, Moroccan sociologist and author Fatima Mernissi merits discussion. Due to her background in sociology, she approaches issues with a special effort to study the daily realities of Muslim women in detail, so as to expose their own perspectives. She offers the discourse of Islamic modernism a unique approach to the issue of female sexuality and how it is identified and dealt with in Islamic society.

In her book, *Beyond the Veil: Male-Female Dynamics in a Modern Muslim Society* (1975), she refers to George Murdock's work, *Social Structure* (1965), which

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[193] Mauwdudi, Mawlana Abul A'la, *Purdah and the Status of Women in Islam*, al-Ashari, trans. (Lahore: Islamic Publications Limited, 1972) 152.

suggests that societies can be divided into two groups regarding sexual instinct: one group, which "enforces the respect of sexual rules"[194] by a "strong internalization of sexual prohibitions during the socialization processes;"[195] and a second group that does so by "external precautionary safeguards such as avoidance rules [because] these societies fail to internalize sexual prohibitions in their members."[196] According to Murdock, "Western society belongs to the first group while societies where veiling exists belong to the second."[197] Mernissi believes that these two societies differ not so much in the mechanisms they employ with which to deal with sexuality, but, instead, in their definitions of sexuality. In her words, "in societies where seclusion and surveillance of women prevail, the implicit concept of female sexuality is an active coercion of the woman's behavior, the concept of female sexuality is a passive concept."[198]

Coming from a harem herself at birth, she offers a unique perspective on the perception of borders, *hudud*, – between private and public, female and male spaces, the veiled woman and the outside world – which she hinges on the notion of sexuality. She "attacks the age-old conservative focus on women's segregation as mere institutionalization of authoritarianism, achieved by way of manipulation of sacred texts,"[199] which she defines as "a structural characteristic of the practice of

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[194] Mernissi, Fatima, *Beyond the Veil: Male-Female Dynamics in a Modern Muslim Society* (Cambridge: Schenkman Publishing Company, Inc., 1975) 3.
[195] Murdock, George Peter, *Social Structure* (New York: MacMillan & Co. Free Press, 1965) 273.
[196] Ibid 273.
[197] Mernissi, Fatima, *Beyond the Veil: Male-Female Dynamics in a Modern Muslim Society* (Cambridge: Schenkman Publishing Company, Inc., 1975) 3.
[198] Ibid 3.
[199] Stowasser, Barbara Freyer, *Women in the Qur'an, Traditions and Interpretation* (New York and Oxford: Oxford UP, 1994) 133.

power in Muslim societies."[200] Instead, she looks to the issue of sexuality within Muslim society as the signifier of power and organizational relationships between men and women.

> Muslim sexuality is a territorial one, i.e. a sexuality whose regulatory mechanisms consist primarily of a strict allocation of space to each sex and an elaborate ritual for resolving the contradictions arising from the inevitable interferences between spaces. Apart from the ritualized trespasses of women into public spaces which are, by definition, male spaces, there are no accepted patterns for interactions between unrelated men and women. Such interactions violate the space rules which are the pillars of the Muslim sexual order.[201]

What she describes is a conceptual division of labor and a specific understanding of social organization and power dynamics within Muslim society – one that, she believes, provides men with power and control over women. For Mernissi, all contemporary conflicts between Islamists and modernists can be explained by considering the issue of female sexuality.

> The territoriality of Muslim sexuality sets ranks, tasks and authority patterns. Spatially confined, the woman was taken care of materially by the man who possessed her, in exchange for her total obedience and her sexual and reproductive services. The whole system was organized so that the Muslim *umma* was actually a society of male citizens who possessed among other things the female half of the population.[202]

Mernissi seems to agree with Qasim Amin's notion that the spatial division of territoriality is due to the fact that women are more able to control sexual impulse than men. Essentially, a bifurcation of Muslim society was imposed upon the community as a means to protect men from the sexual power and hold of women,

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[200] Mernissi, Fatima, *Beyond the Veil: Male-Female Dynamics in a Modern Muslim Society* (Cambridge: Schenkman Publishing Company, Inc., 1975) 8-9, 17.
[201] Ibid 81.
[202] Mernissi, Fatima, *Beyond the Veil: Male-Female Dynamics in a Modern Muslim Society* (Cambridge: Schenkman Publishing Company, Inc., 1975) 103.

which could have resulted in illegal sexual intercourse, which certainly would have contributed to the moral malaise and ills of Muslim society.

> A woman has no right to use male spaces. If she enters them, she is upsetting the male's order and his peace of mind. She is actually committing an act of aggression against him merely by being present where she should not be. A woman in a traditionally male space upsets Allah's order by inciting men to commit *zina*. The man has everything to lose in this encounter: peace of mind, self-determination, allegiance to Allah and social prestige.[203]

In order to avoid this, the spatial borders of society must be maintained.

Mernissi looks to these borders as a means of protection for both sexes. Though oppressive, their establishment serves as a protection for women from violations by men; conversely the borders protect men from their own lack of control regarding female sexuality. The borders are removed only with the legal institutions of marriage.

> *Muhsan*, "protected ones," is the Arabic word for married people, who are protected from just this temptation since they guarantee each other sexual satisfaction… Married women are protected and men are protected from the temptation of adultery… A *muhsana* is protected by the caresses and pleasure given her by her husband just as a city is protected by a *hisn* (citadel, fortress). She is protected not only physically, from the violence of other men that desire her, but above all from the temptations that might push her to transgress the *hudud*, Allah's limits. The sexual *hudud* draw the line against unbridled desire just as ramparts defend the medina.[204]

To be outside of the borders is considered dangerous for women. That is to say, women who leave the house unveiled or who enter a male space without following the appropriate rituals "are considered defenseless because they have left the boundaries of the harem, the forbidden and protected space, but also because they

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[203] Ibid 85.
[204] Mernissi, Fatima, *Islam and Democracy*, 2nd ed., Mary Jo Lakeland trans. (Cambridge: Perseus Publishing, 2002) 8.

have ventured into areas that are not theirs."[205] In order to prevent the seemingly inevitable social interaction between unmarried men and women, Muslim societies have developed specific customs or rituals that are intended to support the maintenance of spatial borders.

> The overlap between male and female areas is limited and regulated by a host of rituals. When a man invites a friend over to share a meal at his house, he knocks on his own door and asks with a loud voice for the women "to make the way" ... The women then run to hide in dark corners, leaving the courtyard free to be crossed by the stranger. The guest will remain with his host, seated in the men's room, until he leaves. If he needs to go to the toilet, the ritual ... is again staged, preventing the taboo situation of interaction between strangers of different sexes.[206]

It is important to note that Mernissi attributes the oppression that women face as a result of these borders (i.e. seclusion and Islamic dress code) not to Islam but, rather, to those traditionalists and fundamentalists that interpret the Qur'an and Hadith for their own purposes and political motivation. Her interpretation of the fundamental sources is one which highlights the relationship of the Prophet with his wives as being a model of the male and female dynamic.

> In Mernissi's reading of the Qur'an and Hadith, Muhammad's wives were dynamic, influential and enterprising members of the community, and fully involved in Muslim public affairs. The women were Muhammad's intellectual partners ... He listened to their advice.[207]

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[205] Mernissi, Fatima, *Islam and Democracy*, 2nd ed., Mary Jo Lakeland trans. (Cambridge: Perseus Publishing, 2002) 7.

[206] Mernissi, Fatima, *Beyond the Veil: Male-Female Dynamics in a Modern Muslim Society* (Cambridge: Schenkman Publishing Company, Inc., 1975) 51.

[207] Stowasser, Barbara Freyer, *Women in the Qur'an, Traditions and Interpretations* (New York and Oxford: Oxford UP, 1994) 133.

She believed that "Muhammad's vision of Islamic society was egalitarian and he lived this ideal in his own household."[208]

Ayatollah Khomeini & the Islamic Revolution

It is the application of Islamic law that fundamentalists consider to be the true essence of an Islamic community. According to Ayatollah Ruhollah Khomeini, "the most prominent Revolutionary Islamist in the twentieth century,"[209] what would make Iran an Islamic Republic was the implementation of the harsh behavioral restrictions perceived to be part of the *shari'a*. The government envisioned by Khomeini was *Vilayat-e Faqih*, government by the jurisprudent, thus both the implementation and, more importantly, the interpretation of the ideals of Islamic law were of the utmost importance. He believed that the government of a Muslim country had four important functions:

1. to enforce the laws of the [*shari'a*];
2. to combat oppression of the rights of ordinary individuals and to eradicate corruption;
3. to fight heresies and errors in the legislation propagated by false parliaments;
4. to prevent foreigners from intervening in Muslim affairs.[210]

With the advent of Islamic rule in Iran, "arbitrary divorce, polygamy, and temporary marriage, all of which had been outlawed or restricted by the Shah's regime, [made] a triumphant return, turning the lives of many women upside down."[211] According to Mehranguiz Kar, an Iranian lawyer and women's rights activist, under Khomeini's

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[208] Ibid 133.
[209] Husain, Mir Zohair, *Global Islamic Politics*, 2nd ed. (New York: Addison-Wesley Educational Publishers Inc., 2003) 73-76.
[210] Hussain, Asaf, *Political Perspectives on the Muslim World* (London: MacMillan, 1984) 186.
[211] Palmer, Monte, *The Politics of the Middle East* (Itasca: F E Peacock, 2002) 350.

regime, "a woman [was no longer] permitted to legally choose her first husband."[212] Regardless of her age or social position, after the imposition of reactionary legal and social changes by Khomeini, every Iranian woman had to have her marriage endorsed by her father or paternal guardian in order for the social contract to be considered legal. His changes were reactionary, reversing the progress made by women years earlier. An example is the Family Protection Law of 1967 (revised in 1975). The Law, "given an Islamic framework by its inclusion in traditional marriage contracts, gave women more nearly equal rights in marriage, divorce and child custody."[213]

This legislation, and other seemingly positive reforms like it, were opposed by Khomeini. In a few years, the Ayatollah and his religiously-legitimized forces rid government of leftists and any apparent liberal forces and enacted a number of 'Islamic measures'. These included the "abrogation of the Family Protection Law [altogether] and the institution of a rule that women must cover their heads, necks and hair, [wearing] either a chador or loose clothing over their entire bodies."[214] Women became the target of several legal and customary forms of discrimination and maltreatment, including brutal corporal punishment. This was somewhat ironic, considering that Iranian women had been active encouragers and participants in the fall of the Shah, under the leadership of Khomeini. They had played a prominent role in political and public affairs during the cultural revolution, only to become victims of their own success in toppling the dictatorial regime of the Shah for the

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[212] Palmer, Monte, *The Politics of the Middle East* (Itasca: F E Peacock, 2002) 350.
[213] Keddie, Nikki R, ed., "Women in Iran: An Online Discussion," *Middle East Policy* 8.4 (2001) 128.
[214] Ibid 128.

dictatorial regime of Khomeini. According to a United Nations report and country profile on the Islamic Republic of Iran:

> The active participation of Iranian women in political processes was prominently displayed in the 1970s and 1980s when their presence in the political scene and their impact on events of the day were tremendous, despite their lack of previous experience in political activities. Women's endeavors during the Islamic Revolution of the 1970s were an exemplification of a mass movement based on religion and social values. It has generally been acknowledged that women's active participation was vital to the success of the Revolution, and that their dynamic efforts and presence resulted in positive changes in the social, cultural and moral aspects of Iranian society.[215]

Women were one necessary ingredient to the success of the Islamic Revolution, but where it left them after the fact is a point of contention that will be covered in more detail in the next chapter of this thesis.

The woman's role in the family was certainly emphasized by Khomeini. Despite the fact that the legal reform was forced, the Shah's 1967 Family Protection Law (revised in 1975 with an even stronger stance against polygamy) had at least provided women with a legitimate legal tool with which to combat injustices within the family unit. When Khomeini abrogated this legislation, society bore witness to the return of repudiation, corporal punishment of wife by husband, polygamy, and other injustices. According to Mehrdrad Khonsari, a former diplomat and leader of the Constitutional movement of Iran, since the inception of the Islamic Republic, the Khomeini regime made the following 'improvements' in the name of 'gender egalitarianism':

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[215] United Nations, Economic and Social Commission for Asia and the Pacific, *Women in the Islamic Republic of Iran: A Country Profile* (New York: United Nations, 1998) 35.

1. The age of marriage [was] lowered to nine, tantamount to legalizing pedophelia.
2. The rates of prostitution and drug abuse [were] high and rising.
3. Women [were] being stoned to death.
4. A woman's testimony [was] worth half that of a man's.
5. Women [were] not allowed to go abroad to study.
6. A widow [could not] become the legal guardian of her children (i.e. custody [was] given to her deceased husband's family).[216]

Especially detrimental to the status of women within the family unit were the provisions for the legal age of marriage for women, the stoning of women, and the guardianship of children whose father had passed away.

Summarily, though Khomeini encouraged and in fact relied on the public participation of women in the Islamic Revolution, once he was set in power, his perspective on their role and position within society shifted, resulting in reactionary policies that rolled back the clock on women's rights and freedoms. By legally lowering the age of marriage to nine years, by allowing stoning to be carried out on women alleged to have committed illegal sexual intercourse, and by permitting women no rights of guardianship of their own children upon the passing of the children's father, Khomeini created a legal framework for the Islamic Republic in which grave abuses towards women could be carried out unchecked, thereby formalizing for them a submission role primarily encompassing their responsibilities in the family within the private sphere.

Abdolkarim Soroush

For the purpose of this thesis, the work of Abdolkarim Soroush is very important to consider, both because he is a contemporary Iranian thinker and because

[216] Khonsari, Mehrdad, and Keddi, Nikki R, ed, "Women in Iran: An Online Discussion," *Middle East Policy* 8.4 (2001) 132.

the context in which his thoughts develop provide him with a unique perspective that, I believe, contributes to an understanding of the current political climate of Iran. Although his work does not focus as specifically on the issue of women, I believe that there is an assumption within it that includes women inherently. His vision is so liberal that it automatically includes women in it.

Soroush has said that he was very influenced by the Islamic Revolution of 1979; this is not surprising, considering that not only was he there, living through it as a citizen, but also he was an active participant in it.

> Soroush was no mere bystander to the events of the Iranian Revolution ... He delivered speeches on religious and philosophical subjects, hoping to mitigate against leftist influences on Iranian intellectuals. He wrote several books based on his lectures, which were well received by ... Ayatollah Khomeini.[217]

In the early phase of the revolution, Khomeini appointed Soroush to the Advisory Council of the Cultural Revolution. According to some, this resulted in his having increased domestic legitimacy; according to others, it remains more contentious, as he appears to have been on side, at least to some degree, with Khomeini at that point, and then to have flipped to advocate a more moderate position, favoring an Iranian experiment with democracy over Khomeini's *Vilayat-e Faqih*. His early motives remain ambiguous. In one interview, he explains that he "entered the Cultural Revolution Institute in [his] capacity as an ordinary citizen, [adding that he had been sent there by] the legitimate leader of a popular revolution to carry out a legitimate

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[217] Husain, Mir Zohair, *Global Islamic Politics*, 2nd ed. (New York: Addison-Wesley Educational Publishers Inc., 2003) 244.

task, namely the transformation of [the] universities' educational system."[218] Whatever his motive for involvement, it remains clear that he was influenced by what he saw occur throughout the course of the Islamic Revolution.

> The Islamic Revolution created the impulse in [his] mind to try and gather others' truths and our truths under the same umbrella and to solve the theoretical and practical problems [that] were and still are confronting [society]. Since the Revolution was based on religious claims, he became increasingly interested in the question of the true place of religion in society.[219]

His understanding of Islam and its place within society became viewed as unique and divergent from the work of past theorists.

Soroush's work stems from the belief that human understanding of religion changes constantly, as does understanding of other forms of knowledge. Unlike many of his predecessors, Soroush identifies Islam as being only one part of a larger context of influences that affect the governing of contemporary societies. According to Mawdudi, for instance, it is society that guarantees individual piety, thereby necessitating the coercive power and authority of Islamic Law. Soroush would look to this notion and others like it, and realize that one conceptual flaw stems from the fact that this, too, relies on human interpretation of God's will. Though he does not necessarily advocate the separation of state and religion, Soroush clearly rejects Islam as a political ideology. Unlike Mawdudi and Qutb, for example, he believes that Islam does not provide specific instructions with respect to government. His assertion is that there is no need for a religious government, because the religiosity of

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[218] Interview, "Conversation with Abdol-Karim Soroush" http://www.seraj.org/conversation2.htm 25.
[219] Sadri, Mahmoud, and Sadri, Ahmad, *Reason, Freedom and Democracy in Islam: Essential Writings of Abdolkarim Soroush* (Oxford: Oxford UP, 2000) 21.

the people ultimately will manifest itself in the character of the state. He focuses on the public knowledge, human understanding and reason, as means to establish democratic principles within Islamic society.

Although Soroush concedes the political significance and mobilizing potential of Islam, his complete rejection of the use of Islam as a political ideology is due to his position that a reliance on ideology as a means to initiate social reform results in a simplification of issues and concepts.

> The reason for this rejection lies in the characteristics of ideology and their effect on religion. In situating itself in opposition to a particular rival, and interpreting the world based on this rivalry, religious ideology reduces the complexity of religion to a fixed ideological world view.[220]

Thus Soroush seems to identify the challenges of modernity and their compatibility – or lack thereof – with religion to be more complex than some of his predecessors.

Another unique feature of Soroush's thought is that he advocates the notion of an evolving understanding of Islam. He differs from other modernists and rationalists in that he concedes the traditionalist and fundamentalist point that Islam is a static, perfect religion. Rather than argue the possibility of Islam being a dynamic set of principles and values that can be interpreted according to changing societal circumstances, he propounds that its essence remains unchanged and unalterable. Instead, it is human understanding that can develop and adapt to the challenges of modern society. Thus, the articulation of a religious ideology restricts an individual's freedom to understand religion, thereby threatening both the proper pursuit of knowledge and governance of society.

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[220] Vakili, Valla, "Abdokarim Soroush and Critical Discourse in Iran," 156. Published in: Esposito, Johan L, and Voll, John O, *Makers of Contemporary Islam* (Oxford: Oxford UP, 2001) pp. 150-176.

> It is impossible at any time to defend one understanding of Islam as definitive. All understandings change over time. But to transform religion into an ideology is to cast it in a definitive, unchanging mold. The use of religion as a political tool also subordinates the depth and complexity of religious understandings to the imperatives of a temporary political struggle.[221]

It is Soroush's separation of religion and religious understanding that sets him apart from other modernist thinkers while simultaneously strengthening his critique of traditionalist and modernist thought.

Soroush's approach is unique in that it is a compromise of sorts between the religious essentialism of traditionalists and the modernist desire to accommodate changing societal circumstances. With respect to women, his work certainly provides more room to debate reform for women, as he is able to appease the traditionalist position that divine revelation must remain untouchable, while providing modernists with an avenue through which to fight for change: the flexibility of human reason. In this regard, his ideas of appealing to modern Iran seem to remain difficult, if not impossible, to implement due to the fact that he does not advocate the complete removal of the religious elite from political power. In order to effect real change – particularly in Iran's Shi'a hierarchy of religious elite and its grip on the nation's political pulse – one must advocate the position that will be opposed by a large number of people. This is not the position taken by Soroush. He draws the necessary distinction between religion and understanding of religion but he still acknowledges the *faqih*, and defines a specific and important role for the clergy to play.

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[221] Vakili, Valla, "Abdokarim Soroush and Critical Discourse in Iran," 156. Published in: Esposito, Johan L, and Voll, John O, *Makers of Contemporary Islam* (Oxford: Oxford UP, 2001) pp. 150-176.

> Religious intellectuals must not only have a commanding view and ease of movement regarding the links and ruptures between the old and the new, but must also be insightful enough to distinguish between mundane religion and elevated religion; must, while maintaining their devotion to religion, not fall into narrow-mindedness and not confuse the peripheral with the fundamental; must be capable of distinguishing the incidental from the essential; must know and understand religion's position in the present age; must know the difference between husk and kernel; and must investigate in earnest the relationship between rationality and religion.[222]

Similarly, he forwards the notion that intellectuals, specifically those who are religious, should avoid political power as their role is to provide thoughtful, unbiased insight. This seems a naïve position for Soroush to take. Surely, he realizes that no believer is prepared to speak out in favor of changing the world, lest he appear to be acting contrary to the path proscribed by God. As argued previously, the position of traditionalists and fundamentalists is not one based in reason or logical thought. Soroush has no hope in winning the favor of those Iranians who subscribe to the ideological tendencies of Islam. Likewise, he has no hope of changing the opinions of the majority of the clergy. It seems an impossibility that he himself does not realize this and alter the path of his work.

In his defense, Soroush does differentiate between clergy and religious intellectuals; the two terms are not necessarily synonymous.

> But the clergy faces many mental and historical impediments that prevent it from joining the ranks of religious intellectuals. [Soroush] believe[s] that the prevalence of the jurisprudential spirit and approach within the clergy has, more than any other factor, acted as a constraint, robbing it of the power to engage in fresh thinking on such serious and important subjects as justice, development [and the like].[223]

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[222] Interview, "Conversation with Abdol-Karim Soroush" http://www.seraj.org/conversation2.htm p. 6.

[223] Interview, "Conversation with Abdol-Karim Soroush" http://www.seraj.org/conversation2.htm p. 34.

He persists in defending his vision of a positive role for the clergy within society. He justifies his position with a functionalist perspective, advocating that the clergy perform a positive societal function in that they pass on their understanding of religion to the people. Soroush suggests that if the clergy did not perform a positive role within society, they would neither have come into existence nor survived to present.

> [However], if the understanding of religion changes; if progressive thinkers [...] gain strength and become the dominant force and present a new and purified conception of religion; and if they avoid having their this-worldly interests entangled with other people's other-worldly concerns, then the standing and role of the clergy will change and it will serve a different function.[224]

Soroush communicates his position in such a way that one can infer that he envisions a constant role for the clergy, which is unusual, considering the end that he claims to want to achieve, namely the move towards a democratic form of government. It is quite possible that the key to understanding this apparent conundrum lies in a consideration of whom Soroush targets as an audience. His work is intellectual and theoretical, clearly not designed for the majority of the Iranian population. Clearly, it is not meant to convert fundamentalists, as they are not swayed by appeals to rational thought. Therefore, it is possible that Soroush's thought is tailored in such a manner as to appeal to a select few within Iranian society. It is logical to assume that this group is intellectual and amenable to the development of an Iranian form of democracy. Hence, it is also possible that the compromise evident in Soroush's work is not so much a flaw as a fixture within layered text. He writes to those who

[224] Interview 39.

support him already. It is difficult to believe that he does not understand the failings of his own writing with respect to his compromised view of religion. It is likely that his inclusion of the role of the clergy and the like is a guise with which to attract the support of those within Iranian society who are not necessarily opposed to the change but who are hesitant to move in the direction of Turkey and advocate the establishment of a secular state in which religion is a private matter.

Conclusion

The purpose of this chapter has been to contextualize and to examine the roots of contemporary discourse on the clash between Islamic modernists and rationalists on one hand, and Islamist traditionalists and fundamentalists on the other. Undoubtedly, the positions advocated by these thinkers and others have had a profound effect on shaping contemporary debates on the rights and roles of women within Islamic society.

Chapter 5: Case Study: The Islamic Republic of Iran

Introduction

The position and rights of Iranian women have changed dramatically from the first part of the twentieth century until today, and the debate continues. Two major political shifts have occurred within Iran, and a third is being negotiated currently. First, Reza Shah Pahlavi introduced sweeping social reforms that were intended to modernize the nation and to solve some deep-rooted societal problems; his focus included improvement to women's rights and mandates regarding women's appearance. Second, the Iranian people, themselves, rose in protest against the Shah's opulent and mismanaged regime, allowing the charismatic Ayatollah Khomeini to garner an unparalleled level of power within the Islamic community and to spearhead the Islamic Revolution, which impacted severely the lives of women and immediately rescinded all gains made regarding legal rights and provisions. Third, the people of Iran, struggling to obtain reform after the death of Khomeini, have borne witness to three landslide presidential elections for reformers, yet change has not materialized as quickly as the people have hoped. The result has been the 2005 election of a hard-liner for President and the struggle between the religious elite and the population en masse continues. The commonality of these three periods in contemporary Iranian history is that the focus has been on the social and political rights of women – matters which have been explicitly expressed in formal laws, enacted to either grant or to rescind rights. The social, political and legal rights of women are dictated by the state and "intricately interwoven with …

Islamic law … so that any changes in the legal situation for women run the risk of offending some of the religious leaders."[225]

Reza Shah Pahlavi

Reza Shah Pahlavi looked to what his father, Reza Sr., had done to define what part women should play in Iranian society. Reza Sr. had made significant legal and social changes in order to integrate women within the public sphere. Much effort was expended in redistributing power from the religious hierarchy to secular institutions. In 1928, the Uniformity of Dress Law was passed, prohibiting the veiling of women. Additionally, the Civil Code was made permanent; this meant that the majority of jurisdiction shifted from religious courts to secular courts. By 1931, a law was passed to confine "religion jurisdiction only to marriage, divorce, and guardianship."[226] Not only did Reza Sr. attempt to restrict religious influence and, rather symbolically, unveil women, he also insisted that women contribute actively to society. According to him:

> Up to this time one half of the population was not taken into account, and there were no statistics of the female population; it seemed as if women were some other type of individuals who did not form a part of the population of Iran. Now that [women] have entered society, it is [their] duty to work: [they] are to be educators of the next generation.[227]

Summarily, Reza Sr. systematically secularized the legal system, the education system, and control of religious endowments. Also, he attempted to ban many popular Islamic practices that were common to Iranian society, including traditional

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[225] Pakizegi, Behnaz, "Legal and Social Positions of Iranian Women," Ed. Beck, Lois and Keddie, Nikki, *Women in the Muslim World* (Cambridge, Massachusetts: Harvard UP, 1978) 216.
[226] Bogle, Emory C, *The Modern Middle East: From Imperialism to Freedom, 1800-1958* (Upper Saddle River: Prentice Hall, 1996) 273.
[227] Wilber, Donald N, *Iran: Past and Present* (Princeton: Princeton UP, 1981) 128.

dress and veiling of women. However, after his abdication, these practices were reinstated and "the *ulema* increased their moral appeal as martyrs to the anti-religious kings."[228]

The royal successor, Reza Shah, did not abandon the goals of his father. In 1963, as part of his "bloodless revolution," he dictated that women would receive the right to vote, hold office, be educated, become employed (or better employed), thereby presenting opportunities with which a change in social status could be enacted. The aim of Reza Shah was modernization and included in his package of proposed societal changes was the emancipation of women. He publicized twelve main points as an overview of what he hoped to achieve throughout the course of the White Revolution. The fifth point on his list was an amendment of the electoral law "so as to grant voting and other related rights to women, extending equal and universal suffrage to all Iranian citizens regardless of sex."[229] It is this change, along with the Family Protection Act of 1967, which one must look to in a consideration of the changing role of women under the Shah. In theory, giving women the right to vote or establishing a legal framework in which to condemn polygamy and make divorce more equitable, seems to indicate that Iran, under the Shah, was moving progressively towards increased women's rights. His social reforms were designed to push women into the public sphere in the hopes of attaining the level of industrial and economic development experienced in the West. Essentially, Reza Shah was asking his people to turn their backs on tradition and to turn a deaf ear to the protests

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[228] Amirsadeghi, Hossein, *Twentieth-Century Iran* (London: Heinemann, 1978) 188.
[229] Government of Iran 198.

of the *ulema* in order to achieve a sudden societal change. One must consider both the results and the repercussions of this top-down approach to reform.

The amendment of the electoral law provided Iranian women with legal permission to participate within the public sphere. When the Shah announced that he was going to give Iranian women the franchise, the justification that he provided was that then women could "'contribute their share to the administration of the country' and participate actively in the process of socio-economic change and political mobilization."[230] This certainly was not the immediate result. Two major characteristics of Iranian society at this time guaranteed that women could not possibly take such a strong position within the White Revolution: the effects of tradition and the Shah's tight control of government. First, it is important to note that a substantial majority of women were not able to make effective use of their newly acquired right to vote due to the fact that they were illiterate. Suddenly being provided the right to vote meant very little to a woman who could not read and who, as a result of a traditional way of life, had spent the majority of her life within the private sphere, thereby possessing limited knowledge of political affairs. This would hold true especially for Iranian women within rural communities.

It is clear, however, that the Shah's reform of the electoral law did benefit women in that it served to provide them a point of departure from which they had a right to proceed to improve their status within society. What they received was legal permission to participate in the public sphere. Partially due to this fact, electoral reform summoned strong opposition, particularly from the powerful, traditional

[230] Saikal 87.

voice of *Shi'a* Islam, the religious hierarchy. The change also did not vastly transform the traditional lifestyles of the rural inhabitants or the traditional mindsets of many within the urban centers. This stems back to a point made in the first section of this thesis, regarding the ideal principles versus practical application of the law. The law is only one part of Islamic society; religion is inextricably bound to the hearts and minds of the Islamic community. This is particularly evident in Iran, as it is the only Islamic state that is dominantly *Shi'a*, thereby providing it with a more organized, religious hierarchy than that found in any other Muslim state. It is through this hierarchy that societal control can be achieved. Therefore, the legal change that the Shah made in 1963 was not sufficient at the time and in its own right to affect substantially the overall position of women within Iran.

Early in 1967, the Shah's next step was the creation of the Family Protection Act. Its stated objective was to rid Iranian society of gross injustices towards women. According to the Iranian Ministry of Information, the new law offered greater financial security to women and made divorce subject to approval by a court of law.

> It [gave] greater rights to women seeking divorce and greater share and responsibility in raising and educating children. Briefly, the new law [was] designed to go a long way towards ensuring a large measure of overall equality for women and wives in the rapidly changing structure of society.[231]

This reform is interesting in that it does intrude upon the jurisdiction of religious law, and it had shown some signs of success in terms of making the outcome and process of divorce more equitable and reducing the frequency of polygamy.

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[231] Government of Iran 208.

> The Family Protection Law of 1967 (revised in 1975), given an Islamic framework by its inclusion in traditional marriage contracts, gave women more nearly equal rights in marriage, divorce, and child custody.[232]

According to Donald Wilber, polygamy, though expressly permitted in the Holy Qur'an, "[was] on the wane as the Family Protection Law require[d] judicial consent for pluralistic marriages."[233] The same law served to deprive man of his former privilege of unilaterally divorcing his wife.

As a means to enhance modernization, the Shah instituted social reforms intended to affect the position of women within both the public and private spheres. He garnered support from the modernists of Iranian society who concurred that there was no basis for continued sexual segregation within contemporary society. Modernists also supported the idea of legally prohibiting polygamy as they looked to it as being a circumstantial solution instituted by the Prophet Muhammad in order to counter a greater negative outcome (i.e. an abundance of deprived and unsupported females within the first Islamic society as a direct result of the Battle of Uhud.), thus there was no reason for them to oppose the legalization of what they believed to be general Qur'anic principles (i.e. to treat one's wife fairly and with compassion). Naturally, this begs the question: What has been the result of these reforms? How has the status of women been affected within Iran? Certainly the direct outcome of the Family Protection Law appeared beneficial. Although life probably did not change immediately for the large number of Iranian women living within rural communities, where the bounds of tradition remained much stronger, the Shah's

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[232] Keddie, Nikki R, ed, "Women in Iran: An Online Discussion," *Middle East Policy* 8.4 (2001) 128.
[233] Wilber 161.

reforms, in theory at least, allowed women to unveil, to get an education, and to become active participants within the public sphere of Iranian life, thereby providing them with a legitimate position from which to improve their status within Iranian society.

The Islamic Revolution and the Ayatollah Khomeini

The Islamic Revolution of 1979 was the result of many societal circumstances, but was looked to later primarily as a symbol of a clash between static and dynamic concepts of religion, with an underpinning desire on both sides to remedy the malaise of Iranian society following the rule of the Shah.

> The rise of the Islamic movement in the 1970s in Iran signified the emergence of a new political sociability and the dominance of a new political discourse, within which women stood for culture, occupying a central position. In this new Islamic political paradigm, imperialist domination of Muslim societies was seen to have been achieved not through military or economic supremacy … but through the undermining of religion and culture. Woman was made to bear the burden of cultural destruction.[234]

For Khomeini, it was the behavior of society – as symbolized specifically by women – that had to be remolded to fit the ideal, as it was not the place of man to alter the path prescribed by God. According to him, what would make Iran an Islamic Republic was the implementation of harsh behavioral restrictions (most of which were woman-focused) that he perceived to be part of the *shari'a*. It was by means of the *Shi'a* religious hierarchy that he was able to sustain his position and strengthen his all-encompassing grip on society. The sort of government envisioned by the Ayatollah Khomeini was *Vilayat-e-Faqih*, government by the jurisprudent, thus both

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[234] Ed. Haddad, Yvonne Yazbeck and Esposito, John L., *Islam, Gender & Social Change* (New York & Oxford: Oxford UP, 1998) 60.

the implementation and, more importantly, the interpretation of the ideals of Islamic law were of the utmost importance to his political scheme. He believed that the government of a Muslim country had four important functions:

1. to enforce the laws of the [*shari'a*]
2. to combat oppression of the rights of ordinary individuals and to eradicate corruption
3. to fight heresies and errors in the legislation propagated by false parliaments
4. to prevent foreigners from intervening in Muslim affairs[235]

In striving to achieve this, Khomeini and his government turned back the clock of the progression of women's rights in Iran and subjected them to positions that were, in some ways, comparably worse to those they had held prior to the reforms of the Shah.

Despite Khomeini's pro-secular and democratic promises prior to the inception of the Islamic Revolution, events after the fall of the Pahlavi monarchy proved to the contrary. With the advent of Islamic rule in Iran, "arbitrary divorce, polygamy, and temporary marriage, all of which had been outlawed or restricted by the Shah's regime, [made] a triumphant return, turning the lives of many women upside down."[236]

> On February 26, 1979, barely two weeks after the overthrow of the old regime, the Family Protection Act, first promulgated in 1967, was scrapped as un-Islamic. Women were dismissed from the judiciary and subsequently barred from many positions and disciplines of higher education. Over the next months and years, incontestably misogynous interpretations of Islamic notions of gender set the political agenda of the new government.[237]

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[235] Hussain, Asaf, *Political Perspectives on the Muslim World* (London: MacMillan, 1984) 186.
[236] Palmer, Monte, *The Politics of the Middle East* (Itasca: F E Peacock, 2002) 350.
[237] Ed. Haddah, Yvonne Yazbeck and Esposito, John L, *Islam, Gender & Social Change* (New York & Oxford: Oxford UP, 1998) 61.

According to Mehranguiz Kar, an Iranian lawyer and women's rights activist, "a woman is [no longer] permitted to legally choose her first husband."[238] Regardless of age or social position, after the imposition of reactionary legal and social changes by Khomeini, every Iranian woman had to have her marriage endorsed by her father or paternal guardian in order for the social contract to be considered legal.

> Other changes that were made ... concerning marriage included husbands being able to divorce their wives legally without their consent or without informing them beforehand, whereas divorce for women was made almost impossible to obtain ... The law requiring a husband to have his wife's consent before taking a second wife was reversed. Child custody was given to the husband after the child was over the age of two, and if the husband dies, the child went to his or her paternal grandfather ... Similarly, in a divorce case, any property goes to the husband's father should the husband die.[239]

According to Ayatollah Ali Moghtadai, the head of Iran's Supreme Court in 1992, "women were not given the right to instigate divorce because they are prone to emotional and irrational decision making."[240] In only a few years, the Ayatollah and his religiously-legitimized forces rid the government of leftists and any apparent liberal forces and enacted a number of "Islamic measures." These included the "abrogation of the Family Protection Law [altogether] and the institution of a rule that women must cover their heads, necks, and hair, [wearing] either a chador or loose clothing over their entire bodies."[241]

> In the summer of 1980, veiling became mandatory for those working in government and public offices ... in April 1983 ... veiling [was] mandatory for all women in Iran, including non-Muslims and tourists ... Because of the

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[238] Palmer 350.
[239] Goodwin, Jan, *Price of Honor: Muslim Women Lift the Veil of Silence on the Islamic World* (Boston: Little, Brown & Company, Ltd., 1994) 114.
[240] Ibid 114.
[241] Keddie 128.

> forced veiling, society has been segregated along gender lines. Coeducation [was] eliminated in universities where female and male students [were] segregated on different sides of the classroom. In public gatherings and in public buses, the two genders [were] physically separated. Women athletes [were] barred from participating in international competitions that do not abide by Islamic dress code.[242]

Women became the target of several legal and customary forms of discrimination and maltreatment, including brutal corporal punishment, which was somewhat ironic, considering that Iranian women had been active encouragers and participants in the fall of the Shah. They had played a prominent role in political and public affairs during the cultural revolution that engulfed Iran in the 1970s, only to become the victims of their own success in toppling one dictatorial regime in support of another. According to a United Nations report and country profile on the Islamic Republic of Iran:

> The active participation of Iranian women in political processes was prominently displayed in the 1970s and 1980s when their presence in the political scene and their impact on the events of the day were tremendous, despite their lack of previous experience in political activities. Women's endeavors during the Islamic Revolution of the 1970s were an exemplification of a mass movement based on religion and social values. It has generally been acknowledged that women's active participation was vital to the success of the Revolution, and that their dynamic efforts and presence resulted in positive ... changes in the social, cultural, and moral aspects of Iranian society.[243]

Summarily, women were one necessary ingredient to the success of the Islamic Revolution, but where it left them after the fact is a point of contention. On the one hand, it is said that women were oppressed and that the revolution as a whole was

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[242] Milani, Mohsen M, *The Making of Iran's Islamic Revolution: From Monarchy to Islamic Republic* (Boulder, Colorado: Westview Press, Inc., 1994) 202.

[243] United Nations, Economic and Social Commission for Asia and the Pacific, *Women in the Islamic Republic of Iran: A Country Profile* (New York: United Nations, 1998) 35.

negative to their cause. On the other hand, it is propounded that the changes imposed by Khomeini's regime resulted in some unexpected outcomes, which served to improve the lives of women within the public sphere.

The woman's role in the family was certainly emphasized by Khomeini's regime, perhaps to the detriment of the other facets of her life. Despite the fact that the legal reform was forced, the Shah's 1967 Family Protection Law had at least provided women with a legitimate legal tool with which to combat injustices within the family unit. Revised in 1975 with an even stronger stance against polygamy, the law made great strides in providing Iranian women more equitable rights in marriage and divorce. When Khomeini abrogated this legislation, society bore witness to the return of repudiation, corporal punishment of wife by husband, polygamy, and other injustices.

> All of the rights [of the Family Rights Act] were cast out by a single decree. Furthermore, women were now worth half the value of men in the courts. They needed permission from their fathers or husbands to travel. They lost custody rights to their children. And they could be punished to death by stoning if found guilty of adultery. Ayatollah Khomeini justified this by claiming that the Family Rights Act was unjust and a product of Imperialist rule and exploitation.[244]

According to Mehrdrad Khonsari, a former diplomat and leader of the Constitutional movement of Iran, since the inception of the Islamic Republic, the Khomeini regime has made the following "improvements" in the name of "gender egalitarianism;"

1. The age of marriage has been lowered to nine, tantamount to legalizing pedophilia.
2. The rates of prostitution and drug abuse by women are high and rising.
3. Women are being stoned to death.
4. A woman's testimony is worth half that of a man's.

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[244] Alavi, Nasrin, *We Are Iran: The Persian Blogs* (Vancouver: Raincoast Books, 2005) 164.

5. Women are not allowed to go abroad to study.
6. A widow cannot become the legal guardian of her children (i.e. custody is given to her deceased husband's family).[245]

To think that these changes were made only two and a half decades ago is somewhat horrifying. It is hard to believe, also, that it was the intention of the Prophet or the underpinning principles of the Qur'an that were adhered to in these matters, even though said changes were claimed to be made for the greater morality of society. Especially detrimental to the status of women within the family unit are the provisions for the legal age of women to engage in the social contract of marriage, the stoning of women, and the guardianship of children whose father has passed away. It should be noted that not all Iranians turned to the legal framework of the new regime and capitalized upon the ability to suppress women at home or to lower their status within society. In fact, a significant part of the population, both male and female, vehemently opposed the reactionary policies. The problem was that the legal provisions had been set for those within Iran who would want to use them in a cruel or oppressive manner.

Certainly a strong argument could be made against such oppressive treatment of women, yet Khomeini and his fundamental regime claimed their authority to be based in religion and the people had little choice but to conform; to complain or to oppose Khomeini was tantamount to heresy, as Khomeini's interpretations of the Qur'an and Hadith were enforced by his government and on the streets by his "Morality Police". In regards to the provision made for stoning a woman, it is

[245] Khonsari, Mehrdad, and Keddie, Nikki R, ed, "Women in Iran: An Online Discussion," *Middle East Policy* 8.4 (2001) 132.

categorized as affecting a woman within her role in the family due to the fact that it was the prescribed punishment for alleged acts of alleged unchastity, which were strictly prohibited under Khomeini. Within the Islamic Republic, "adultery was strictly outlawed and punishable by flogging or death by stoning ... and men were legally permitted to kill their wives if they were unfaithful, which led to cases of women being killed when spouses were suspicious only."[246]

> While the death penalty, in Islamic Law, is optional for murder, it is mandatory for any convicted adulterer who could have satisfied his or her sexual urges lawfully with a spouse. The sentence is commuted to a hundred lashes if the adulterer is unmarried, or if the spouse was ill or far away when the adultery was committed.[247]

Once charged with committing a lewd act, it was exceedingly difficult for a woman to escape the allegations due to the literal Qur'anic application that she would require four male witnesses of virtuous character to collaborate her version. A woman charged in the Islamic Republic, with little ability to defend or protect herself, likely faced a horrible sentence: stoning.

> Women [to be stoned are buried] to the chest, and the size of the stones is carefully regulated. Neither boulders nor pebbles may be used, so that death is neither mercifully quick nor endlessly prolonged.[248]

So strong is the adherence to perceived religious decree, seemingly strange aberrations are accepted in rare occasions. For example, in 1991, an Iranian woman, "who managed to scramble out of the pit in which she [had] been buried, had her

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[246] Goodwin, Jan, *Price of Honor: Muslim Women Lift the Veil of Silence on the Islamic World* (Boston: Little, Brown & Company, Ltd., 1994) 114.
[247] Brooks, Geraldine, *Nine Parts of Desire: The Hidden World of Islamic Women* (New York: Anchor Books, 1994) 45.
[248] Brooks, Geraldine, *Nine Parts of Desire: The Hidden World of Islamic Women* (New York: Anchor Books, 1994) 46.

death sentence commuted,"[249] as the religious judiciary decided that her escape must have been willed by God.

Even rape could be considered worthy of punishment within the Islamic Republic, as it constituted a sexual act external to marital bonds. This allowed a man a great deal of power over a wife in terms of alleged infidelity. Again, according to modernists, this possibility of corporal punishment directly opposed the moral guidelines of the Qur'an and Hadith. As outlined in the scripture, the power of a husband over his wife is "only disciplinary and proprietary, and as part of that disciplinary power, a husband can inflict corporal chastisement [...]"[250]in a few, specified circumstances, but that did not provide him with free reign to abuse or to treat her incorrectly on a general basis. Thus the practice of stoning women was the extreme end of an abuse of a Qur'anic verse intended to provide for a stable family unit, characterized by mutual obligations, love, and compassion. Lastly, the fact that, in the past two decades, an Iranian woman could not become the legal guardian of her own children upon the death of her husband is both difficult to believe and potentially tragic for mothers and their children. Islam as a faith and a model for the correct organization of society emphasizes the importance of having children and being good, loving parents. The main role of the woman, traditionally, was to rear her offspring within the private sphere. To forbid her from being their legal guardian was both insulting and dangerous. In the event that a woman was disliked by her in-laws, they could take her children and prevent her from having any contact in their

[249] Ibid 46.
[250] Qureshi 50.

lives, and it would be their legal right to do so. Summarily, it is clear that, though Khomeini initially promised something very different to Iranians, the society that he created for them was one that attempted to lower the status of women within the family. By legally lowering the age of marriage to nine years, by allowing stoning to be carried out on women alleged to have been impure, and by permitting women no rights of guardianship of their own children, the Islamic Republic of Iran created a legal framework in which grave abuses towards women could be carried out unchecked.

Perhaps the area of a woman's life that was least affected was her role as a believer. The Revolution had been carried out by society as a whole in the name of religion and in order to rid Iran of a corrupt and out of touch Shah. Women were active participants in their own right. It was their purported equality as believers and subsequent support in the revolution that had allowed Khomeini to ascend to power. Consequently, it was in the best interest of the regime to reinforce the importance and equality of all believers within Iranian society.

> The successful utilization of the masses' religion as well as the increasing radicalization of the religious forces may be attributed initially to the repressive policies of the [Shah's] regime. [... t]he regime suppressed other outlets of freedom – the press, political parties, student organizations, and any forum for free speech – leaving dissidents little choice but to organize behind religion. Obviously, the large network of [...] mosques and holy shrines served by about 180,000 mullahs facilitated this process of gravitation toward religion.[251]

[251] Zabih, Sepehr, *Iran's Revolutionary Upheaval: An Interpretive Essay* (San Francisco: Alchemy, 1979) 20.

As mentioned in an earlier chapter, the Qur'an clearly states that men and women are perfectly equal in terms of spiritual and moral development, and that moral progress of all is of the utmost importance. For example:

> And whosoever does deeds of righteousness,/ be it male or female, believing –/ they shall enter Paradise, and not be wronged/ a single date-spot. (IV: 91)
>
> Men and women who have surrendered,/ believing men and believing women,/ obedient men and obedient women,/ truthful men and truthful women,/ enduring men and enduring women,/ humble men and humble women,/ men and women who give in charity,/ men who fast and women who fast,/ men and women who guard their private parts,/ men and women who remember God oft –/ for them God has prepared forgiveness/ and a mighty wage. (XXXIII: 431)

Khomeini encouraged this spiritual basis of equality among believers. One could say that it was not the equal status of male and female believers that changed, but the duties and responsibilities of a believer that evolved with the inception of Islamic Republic. Under the Shah, a religious believer was responsible basically to himself or herself, as religion was more of a private act. This shifted dramatically with the Islamic Revolution in which any political action or objective was voiced in religious vocabulary and coated with Islamic allusions. Before the Revolution, the religious hierarchy was loose, "with each layer 'imitating' the layer above it on a more or less voluntary basis."[252] Also, the religious hierarchy was non-political, as the ayatollahs devoted themselves primarily to religious affairs. But this changed with the ascendancy of the Ayatollah Khomeini.

> The power to interpret the wishes of the Hidden Iman became manifestly political and… provided the Ayatollah Khomeini with a weapon of mass mobilization far more powerful than the guns of the Shah.[253]

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[252] Palmer 338.
[253] Palmer 338.

It was Iran's religious hierarchy that was able to control the state and sustain Khomeini's power. Thus, one could argue that with the reign of Khomeini came a more broad definition of a "believer." Having a government that claimed authority from the Hidden Imam, himself, presented believers, male and female alike, with a conundrum of sorts. Since every social change that was enacted by Khomeini was stamped with religion, to be a believer meant that one would continue performing one's individual obligations to God, but also that one would conform to the ideals presented to society by Khomeini.

> All laws of the Islamic Republic of Iran are derived from [Shi'i] rules and jurisprudence, the sources of which are the four grounds [of the Qur'an, the sunna, ijma and the reasoning of the jurists] … Therefore, any criticism of the Islamic laws weakens the faith and beliefs and religion of Islam.[254]

Thus, the status of women as believers was not lowered with the creation of the Islamic Republic, but the roles assigned to believers did change and many of the reforms intended to be practiced by "believers" did serve to lower the overall position of women within Iran.

Perhaps the role of woman most affected by Khomeini's regime was her role as an individual within Iranian society. This is best illustrated by the *hejab*. Both symbolic and powerful, the "visual significance of the forced *hejab* is probably one of the most important contributors to the politicization of women"[255] During the 1980s, under the newly created Islamic Republic, women were forced to wear the

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[254] Ed. Haddad, Yvonne Yazbeck, and Esposito, John L, *Islam, Gender and Social Change* (New York & Oxford: Oxford UP, 1998) 59.
[255] Moghadam, Fatemeh E, and Keddie, Nikki R, ed, "Women in Iran: An Online Discussion," *Middle East Policy* 8.4 (2001) 140.

hejab so as to adhere to proper modesty within society. To refuse to veil or to veil badly merited harsh punishment.

> The women of Iran ... can expose the face, but should cover the hair and neck. Otherwise they face arrest, imprisonment, flogging, cash fines; and if they refuse it, they face knife and acid attack.[256]

As soon as the decree on *hejab* was issued the regime made sure that compliance would ensue. Anticipating resistance, mandated groups were created to monitor and force proper behavior and dress throughout the Islamic Republic.

> The Office for Propagation of Virtues and Prevention of Sins was formed to supervise Islamic morality and behavior. Young zealots, organized in small groups ... patrolled the streets and arrested those who did not abide by the Islamic dress code and who transgressed Islamic morality.[257]

Women whose appearance was deemed too lax and, therefore, 'un-Islamic' were subject to arrest on the street. Fashion offences could include such minor infringements as buttons which were considered too attention-grabbing, splits in the back of coats which were too high, stockings or socks which were not entirely opaque or even a few stray hairs that protrude from the veil and are obvious to onlookers. In *Price of Honor: Muslim Women Lift the Veil of Silence on the Islamic World* (1994), Jan Goodwin provides a poignant example of what could happen to an Iranian woman if apprehended for being poorly veiled in public. A fifty-five year-old woman named Faribah speaks frankly with Goodwin about being arrested for having too much hair showing as her veil slipped back when her arms were full of groceries. She was arrested on the spot, as she opened the trunk of her car. She and

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[256] Karolia, Moulana Muhammad, "The Koran Teaches That Women Cannot Be Leaders," Ed. Yuan, Margaret Speaker, *Women in Islam* (Sandiego, California: Thomson Gale, 2005) 19.
[257] Milani, Mohsen M, *The Making of Iran's Islamic Revolution: From Monarchy to Islamic Republic* (Boulder, Colorado: Westview Press, Inc., 1994) 203.

more than one hundred other women of ages ranging from teenagers to senior were loaded on a bus and taken to Monkarat Jail for processing. She describes her worry and that of the other woman as the penalty for being poorly veiled in public was up to one year in prison and/or a number of lashes. She was released from jail only after her husband had put up the deed of their house as bail; she was told to appear in court two weeks later.

> "When we went to the court ... there were a lot of women waiting, some were prostitutes, some drug addicts. These women had been beaten and their legs were covered in blood. Each of us was called in turn before a mullah ... A Revolutionary Guard informed the women arrested with Faribah that he thought they would be fined Rials 500,000, approximately three months' average salary. "One woman became very upset, and started shouting ... apparently the mullah heard her ... I became scared then, worried what the reaction might be. When the guard came back he told us the mullah was furious and had ordered all of us to receive eighty lashes. The woman who was five months pregnant was terrified ... Faribah was herded into the basement of the building with the other women. "It was horrible looking, damp and dark. Some woman began to cry hysterically, and the guard told her, 'Don't scream, no one can hear you, so don't waste your energy.' ... "Two [guards] took me into a cell. One was holding a whip in his hand. They handcuffed me facedown on a wooden bed. All I could think was, This is not really happening, this is not Islamic, how can a religious government let men do this to women? Then they started whipping me."[258]

Goodwin concludes that the punishment was perhaps more damaging mentally to Faribah than it was physically, though certainly excruciating and dangerous (particular to the old, young and pregnant women). It was a horrifying shock for an educated and successful fifty-five year old Iranian woman to be taken off the street and condemned to a punishment of 80 lashes at the whim of a mullah. Indeed, the

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[258] Goodwin, Jan, *Price of Honor: Muslim Women Lift the Veil of Silence on the Islamic World* (Boston: Little, Brown & Company, Ltd., 1994) 108-112.

incident changed Faribah's life, as it certainly changes the lives of all Iranian women affected.

As horrifying and oppressive as the dress code could be in Iran, there was an unintended and unexpected outcome as a result of forced *hejab*: it served to "blur the traditional conventions that placed one gender within the private and one in the public sphere."[259] Not only did the implementation of the *hejab* fail to prevent secular and moderate Iranian women from being active participants in the public sphere, but it has made the public sphere accessible also to women from traditional Muslim families that previously would have been allowed very little contact with the outside world for fear of temptation or allegations of impurity. According to Hossein Partovi, a professor of physics from California State University:

> In retrospect, what was astonishing was how rapidly the presence and participation of women in the public arena had gained universal acceptance and legitimacy among the citizenry, a feat that half a century of government-decreed modernization measures by the Pahlavi regimes had failed to achieve.[260]

Professor Partovi visited Iran in 1989 to give a short course of lectures at Sharif University. He was surprised at the large number of female students in attendance at one of his lectures. Though adhering to the dictated code of dress and sitting apart from their male counterparts, he found that the number of women at the University to be much higher than before the Revolution. Under the Shah, advocates of religious piety and moral authority had encouraged traditional parents to forbid their daughters

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[259] Moghadam, Fatemeh E, and Keddie, Nikki R, ed, "Women in Iran: An Online Discussion," *Middle East Policy* 8.4 (2001) 140.
[260] Partovi, Hossein, and Keddie, Nikki R, ed, "Women in Iran: An Online Discussion," *Middle East Policy* 8.4 (2001) 136.

to attend post-secondary institutions like Sharif University for fear of corruption. The *hejab*, though forced upon women, provided them with a personal symbol of piety, thereby providing them greater freedom within the public sphere. Indeed, the imposed dress code has improved significantly the lives of women from conservative backgrounds. "By its very nature, and perhaps in spite of it, [Khomeini's] regime removed a major religious-cultural impediment"[261] to the participation of women within the public sphere. Also significant are the strides that have been made in both education and employment levels of women within Iran since the Revolution. Additionally, the Constitution of the Islamic Republic of Iran of 1980 "guarantees women equal rights to those of men in regard to participation in the political process, as both voters and candidates."[262] According to research done by the United Nations since the creation of the Islamic Republic of Iran, "[a]lmost all rules and regulations that had discriminated against women [have] been nullified."[263] That said, despite the unexpected result of the imposition of the *hejab* on Iranian women and some improvements in education and employment levels, the Ayatollah Khomeini succeeded in creating a legal framework in which the rights of women as individuals were hindered considerably.

In summary, one can say that during the reign of the Ayatollah Khomeini, the state took over the interpretation and application of Islam and capitalized upon religious language and allusions to propagate a number of legal and social changes,

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[261] Partovi, Hossein, and Keddie, Nikki R, ed, "Women in Iran: An Online Discussion," *Middle East Policy* 8.4 (2001) 136.
[262] United Nations 36.
[263] Ibid.

many of which were designed to suppress and regulate the role of Iranian women within the public sphere in the name of greater morality and justice. Some of the changes (i.e. the abrogation of the Family Protection Act) succeeded in their reactionary aims to retract the legal rights of a woman in the areas of child custody, marriage, and divorce, thereby diminishing her role within the family unit. Other changes, designed to regulate her participation in public affairs, had the unintended result of providing Iranian women with the social mobility to engage in the public sphere so long as they attired themselves in a chaste and pious manner, as illustrated by the guidelines of the mandated dress code. It was by means of installing the strict religious guidelines of the *shari'a* that the traditionalist force within Iranian society was able to inflict upon women a literal and seemingly static interpretation of the Qur'an and the Hadith, but such a view was not able to combat in entirety the challenges of a new regime – especially one that had been characterized by seemingly modern legal reforms and social interactions up until 1980. Thus, women were able to make the best of the situation presented to them by the Ayatollah Khomeini and to use the increased social mobility afforded to them by the forced *hejab* to continue to fight for improved rights and status within all facets of contemporary Iranian society.

Chapter 6: Beyond the Islamic Revolution

Introduction

The purpose of this work is to examine the position of women in the Qur'an and the Hadith, and to consider how these basic texts of Islamic Law have been interpreted and applied to affect the roles and rights of women within contemporary Islamic society. This examination included also a consideration of the issue of human rights with respect to women within Islamic society, the views of some prominent Islamic thinkers, and a case study of the status of women in Iran. As I proceeded with my inquiry, I began to realize that, within the case study and for the purpose of the greater outcome, it is important to question how the Islamic system of Khomeini differed from the more secular system of the Shah, in so far as women's rights and positions in society are concerned. How did women's lives change, shifting from a rule which refused the public influence of the religious ideals, as contained within the Qur'an and Hadith, to the regime of a political leader whose governance was based solely on the principles that he claimed to find within the basic texts of Islam? In considering this, I realized also that it is important to question whether Islam, as a state-imposed system of governance in Iran, is truly as restrictive to women as is generally believed. It was important for this study, therefore, to navigate through complex social issues by maintaining the issue of Islamic Law as a constant backdrop against which to examine the lives of Iranian women – during the reign of the Shah, the Islamic revolution led by Khomeini, and beyond. Although this thesis did not examine *all* issues that pertain to women's roles and rights within Islamic

society in the twenty-first century, I believe that the snapshot provided of the lives of Iranian women within a specific period of time pertains to matters which can be applied broadly to common issues that affect contemporary Muslim women throughout the Islamic world. Though state governments and legal codes differ, I would suggest that there exist some fundamental aspects of any contemporary debate of women's roles and rights according to Islamic Law that are able to permeate nation-states and communities and be applied to the lives and rights of most women.

The Reign of the Shah

Under the Shah, and his imposed and more secularized version of government, the rights and roles of women were clearly impacted. He pushed Iranian society to appear to be more like its Western counterparts through a privatization of religion and the exclusion of the *ulema* from the process. It was a top-down approach designed to expunge the religious character of the state and to embrace the economic success of the West through a series of social changes.

At first glance, it seems logical that women would benefit as a result of the reforms made to Iranian family law (as encapsulated by the 1967 and 1975 Family Protection Acts), to the dress code (forced unveiling) and to the political sphere (women were allowed to vote and run for electoral office as of 1963). In essence, what women were receiving was legal permission to participate within the public sphere. Certainly the mandated reforms provided a legal and political framework within which women could be more visible but there seemed to be little consideration for social traditions and customs, and the Shah's motive (the desire for

Westernization) resulted in contention and the degree of impact felt by women throughout Iran was not uniform.

Under the Family Protection Acts, the Shah intended to modernize and, subsequently, to improve the lives of women within the private sphere. Whereas the legal age of marriage had been fifteen for girls and eighteen for boys (and under "special circumstances" could be lowered to thirteen for girls and fifteen for boys), the FPA required that girls be at least eighteen years of age and boys be at least twenty (FPA 1975, article 23). Prior to the reforms of the Shah, it was the legal right of men to engage in polygamy, taking several wives with little or no consultation with their first wife. Although few Iranian men took part in this right, the legally institutionalized option was certainly there for those who wished to pursue it. The FPA of 1967 decreed that if a man wished to take a second wife, he required the permission of the court. The court, when possible, would discuss the matter with the first wife in order to ensure that the man had both the interest of both wives at heart and sufficient financial support to care for each wife equitably and adequately. The legislation went a step further in 1975, stating that a man then had to obtain the consent of his first wife if he wanted to take a second. The only exception to this stipulation was if a wife was deemed to be failing in her duties within the marriage (i.e. refusing to have sexual relations or being unable or unwilling to have children). Regardless, if a man took a second wife, his first wife was granted the right to obtain a divorce (FPA 1975, article 16 and 17). This legislative change was very significant as, prior to the FPA, a woman had very little ability to obtain a divorce. In fact,

whereas the Iranian Civil Code granted a man the right to divorce his wife at will, without any reason for doing so, a woman had only the right to ask for a divorce within the parameters of a few, very specific conditions, which pertained to the alleged failure of her husband to fulfill his duties towards her. These conditions were very hard to prove and the courts tended to favor the position of the husband.

Although legally women were entitled to more equitable treatment under the Shah, practice and theory differed. The substitution of Western legal codes for Islamic Law was contentious; rather than focusing on the rights and freedoms gained, Iranians became resentful of imposed Western influence and their pride in Islamic traditions and practices was renewed, especially in smaller communities where local customs retained their most tenuous grip regardless of outside influence. As with any reform mandated by a regime, rather than adopted by a regime at the urge of its population, the changes in roles and attitudes regarding Westernization in general and the advancement of women in particular were not easily attained. Indeed, the impact of legal reform was felt more directly by women in urban centers than in rural communities, as in the latter cultural tradition and custom played a more direct role in daily life. Even the question of women's ability to benefit from legal reform must be posed as likely many women were hesitant to bring their private lives to the court for arbitration or settlement as to do so could have resulted in a worse situation at home than before. For example, if a man took on a second wife, what was a woman to do realistically? If she were to complain to the court and the second marriage was nullified, the strain put on the marriage would likely destroy it to a

greater degree than her allowing the second wife to remain in the home. The same thinking can be applied to the age of marriage. If a thirteen, fourteen or fifteen year old girl was contracted to a marriage by her parents, what sort of recourse was made available to her? Even within the framework of a reformed family law structure, the ability of Iranian women, particularly those within rural or smaller urban communities, remained hindered by the long-standing social customs and traditions, which quickly became representative of a renewed pride in Islam, as a result in wide-spread and increased resentment towards the Shah and his regime.

Another matter to consider was the impact felt by women of certain ages. An example of this was the reaction of women to the Shah's mandates regarding the female dress code. The forced unveiling of women was a personal matter that was responded to differently by women throughout the country. Whereas some women were happy or even non-responsive to state encouragement to dress in a more Western fashion, others – particularly older and rural women – were mortified at the thought of leaving the house with their hair uncovered (an act which they had been raised fervently to avoid and to consider inappropriate). Therefore, one unintended result of the Shah's reforms was a self-imposed decrease in mobility and freedom in the public sphere by some Iranian women – those who were embarrassed, uncomfortable or resentful to be forced to emerge publicly without the veil.

Regarding the political rights provided to women, a similar lack of progress resulted. Although afforded the right to run for election for a public position, the number of women who chose to do so was marginal at best as the legal right alone

was not enough to shift societal perception and male influence, both of which hindered a women's ability to enter into the public sphere in such a manner. The matter of social custom and attitude certainly would have impacted their ability to both to run for office and even to vote. The other matter, of course, was that providing women suffrage was almost a moot point for the Shah as Iran had only one political party for which to vote, if women were not restricted from doing so by husbands, fathers and others.

As mentioned previously, it is important to remember that the reforms made by the Shah were made from the top down. The motive was the Shah's desire for "modernization" and "Westernization" and not the demands of the people for increased rights and social equity. Without engagement from the population as a whole, the legal, political and social changes had little natural traction within communities – perhaps less so in rural than in urban centers. Some propound that, for the most part, Iranian women's lives remained unchanged as a result of the reforms, as only upper and middle class women would have felt any benefit at all – particularly with respect to employment. For example, whereas "upper and middle class women became Ministers, attended the Olympics, and even served as delegates to the Mexico City International World Conference on Women,"[264] the lives of most benefited little and some felt negatively impacted, as indicated by their discomfort at being forced to adhere to a "Western" dress code. Traditional ways of life and social customs retained influence. This is evidenced by statistics regarding women's

[264] Bahramitash Roksana, "Revolution, Islamization and Women's Employment in Iran," Winter / Spring 2003, Volume IX, Issue 2 (pp. 229-241) 235.

involvement in the public sphere *via* employment, spanning from before the implementation of the Shah's reforms until the prelude to the Islamic Revolution. In 1960, 17.9%[265] of the total female population in Iran was part of the labor force. This increased to 18.45% in 1965[266], to 19% in 1970[267] and to 19.7% in 1975[268]. In fifteen years, the number of Iranian women in the workforce increased by only 1.8% despite the significant reforms attempted by the Shah.

The Islamic Revolution

Prior to the 1979 Islamic Revolution, many of the reforms initiated by the Shah failed to resonate with the population en masse. Rather than embracing forced unveiling, the veil became a signal of anti-Western and, hence, anti-Shah sentiments and more and more women began to wear it in opposition to the Pahlavi regime. Women were active supporters and participants in the revolution but its victory unexpectedly served to alter once again their rights and roles within Iranian society.

Moving away from a more secular style of governance, Khomeini chose a different path, insisting that the only legitimate rule was, in fact, that by religious authority – i.e. Islamic Law. As discussed earlier within this thesis, Islamic Law is uniquely dualistic in nature, involving the competing demands of religion and law, resulting in a set of rules that may not mesh naturally with the contemporary will of Islamic society. Its encapsulation of the constant and undeniable tension between the sacred and temporal worlds, which is manifested clearly in each case of the

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[265] Bahramitash Roksana, "Revolution, Islamization and Women's Employment in Iran," Winter / Spring 2003, Volume IX, Issue 2 (pp. 229-241) 235.
[266] Ibid 235.
[267] Ibid 235.
[268] Ibid 235.

interpretation and application of the Qur'an and Hadith, provides a political leader with a value set that is idealistic and enforceable only by means of real political power – in the case of Khomeini, this was facilitated by a powerful religious elite and operationalized by a capable police force with the political mandate to impose severe punishment for even the smallest perceived infraction of religiously ideal social appearance. The result of the Ayatollah's reign was that ultimate political authority came to rest with a powerful conservative force of religious leaders – a shift that remains today. His version of leadership was one characterized by *Vilayat-e-Faqih*, government by the jurisprudent, the end result of which was what appeared to be a diminution of social rights and freedoms, especially for women.

During the revolution, Khomeini was well supported by women. Once victorious his first move was to impose harsh restrictions on their rights and roles so as to encourage them to return to their "primary" roles as wives and mothers, in order to encourage the stability of Iranian society in accordance with what he considered to be Islamic ideals. Not even two weeks after the overthrow of the Shah, Khomeini repealed the Family Protection Act, on the basis that he considered it to be "un-Islamic". Immediately the legal age of marriage was lowered from eighteen to thirteen for girls. In some cases, the regime even allowed the marriage of girls as young as nine, so long as a certificate from a physician was provided. Regarding polygamy and divorce, the provisions enacted to protect women from polygamy were quashed and divorce was made even more inaccessible. For men, on the other hand, divorce once again was made a legal right that husbands could take at any time

without consulting, or even informing, their wives. Even more concerning was the matter of child custody. Under the Islamic Republic, custody of children was granted to the father once a child has reached the age of two years; if a husband dies, the custody of children is passed on to his family, not to the mother of the children – the same situation is applied in cases of divorce. This legal change certainly impacted the lives and minds of Iranian women.

The matter of modesty and sexual relations garnered even more attention from the Islamic Republic. Adultery was strictly outlawed and allegations were very hard to disprove as four religiously approved male witnesses were required for refutation. Punishment for this type of sexual impropriety and others included imprisonment, lashings or even death by stoning. In the case of women the situation was more severe; men were granted the legal right to murder their wives if they were unfaithful. The notion of proper sexual behavior was taken even farther for girls, whose virginity became a topic of national debate and interest. If the "Morality Police" found young, unmarried girls at non-segregated parties, they would be subject to virginity tests. The punishment of failure could be twofold: lashes or immediate marriage to the unmarried male a girl was found with at the time.

Regarding the public appearance of women, the implementation of an Islamic dress code was both a blessing and a curse for Iranian women. On the one hand, they were subjected to a form of dress that is heavy, uncomfortable and oppressive, and to fail to veil properly can result in punishment as severe as lashes, beatings and jail time. On the other, adherence to the dress code was a means to greater access

and freedom within the public sphere. Whereas under the Shah, women could be prevented from leaving the home out of a fear of being viewed immodestly or inappropriately, the Islamic dress code remedied this problem and made the outer world more accessible (at least with regards to the issue of modesty) to more women. The main deterrent then became fear – of the "Morality Police" or of religious zealots – of being accused of improper dress in public.

At first glance it seems obvious that Khomeini's Islamic regime hindered the rights of women and, in fact, took them backwards to levels of the time before the Shah's reforms. This may not be the case. First, in the realm of education and literacy, the rights of women have improved significantly since the inception of Islamic rule. One part of this was Khomeini's support for literacy and education for Iranians as a whole. Whereas, under the Shah, a woman's desire to become literate or to acquire a level of education may have been quashed by a husband, father, other male relative or her community, due to decree by religious leaders, under Khomeini, such resistance became impossible as it was then the religious leader, himself, who was encouraging women to read and to become educated.

Within the Islamic Republic, education was free and made available to Iranians and, so long as women adhered to the religiously prescribed dress code and social behavior mandated for them within the public sphere, they were able to manipulate the system to their benefit – i.e. to acquire an education and, then, perhaps even to use that education within the workforce, if even in a domain that was segregated sexually. The Islamic Republic came to adopt a number of policies that

institutionalized sexual segregation within the public sphere. Interestingly, this created the paradoxical situation for women in that they could improve their rights within certain spheres and generally improve their lot, even though their roles within other aspects of their lives were, perhaps, more repressed. This means, for instance, that while a woman was more able, under the Islamic regime, to pursue some educational attainment and, even encouraged by the state to acquire education within certain fields so as to work within sexually segregated niches, her education was not considered equal to that of a man, nor was she free to work within the market as she wished. For example, "the government set quotas for female pediatricians and gynecologists and set up barriers against women wanting to become civil engineers."[269] According to the United Nations Special Rapporteur, reporting on violence against women in Iran:

> [Today the] ratio of girls attending primary school is almost equal to that of boys. The literacy rate for women is improving, although 31% of them are still illiterate, compared to 17% of men. [And] the most significant progress has occurred in higher education, where 62% of the students are women.[270]

Thus women have benefited from the Islamic regime in the area of literacy and education.

The area of employment is an interesting realm of life to consider. Although women within the Islamic regime were more involved in the labor force than those under the Shah, the significant increase in educational attainment has not been met

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[269] Bahramitash Roksana, "Revolution, Islamization and Women's Employment in Iran," Winter / Spring 2003, Volume IX, Issue 2 (pp. 229-241) 236.

[270] United Nations Economic and Social Council, "Integration of the Human Rights of Women and a Gender Perspective: Violence Against Women," Report of the Special Rapporteur on violence against women (in Iran), (New York: United Nations, 2006) 9.

with a significant increase in labor force participation. According to the United Nations, in 2003 women "were over-represented among the unemployed and ... constituted only 14.2% of the formal labor force, concentrated in low-paid, sex-stereotyped sectors."[271] In addition to this, the earning power of women remains significantly lower than men, regardless of credentials. According to the United Nations Human Development Reports, the estimated earned income of a woman in Iran in 2003 was $3,094 US, versus $10,856 US for a man.[272] There are a few factors within the Islamic Republic that help to explain this phenomenon. The first is the Islamic interpretation of the law that can be used to restrict or to ban women from working either in specific types of work or altogether. For example, article 75 of the Iranian Labor Act prevents women from work that is considered to be "dangerous, difficult or harmful." Interpretation of these words is likely conducted by male employers and husbands, fathers or other male relatives. Additionally, and more explicitly, article 1117 of the Iranian Civil Code provides a husband with the right to prevent his wife from taking employment that could be considered incompatible with the interests of her family.

Beyond the Islamic Revolution

Today the lives of women in Iran remain intimately linked to the values and principles that underpin the development of the Islamic state. Both the secular regime of the Shah and his reforms, and the Islamic Revolution of Khomeini and his Islamist regime have left a mark on the rights and roles of Iranian women. It is

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[271] Ibid 9.
[272] United Nations Human Development Reports – Country Sheet: Iran. http://hdr.undp.org/statistics/data/countries.cfm?c=IRN Accessed on September 13, 2006.

important in the continuing post-Khomeini era that one note that Iran now, as a result of some of the programs created by Khomeini, has a very young and energetic population. According to the CIA World Fact Book, the total population of Iran as of July 2006 was 68,688,433. Of these, 26.1% are 14 years of age or younger, 69% are between the ages of 15 and 64, and only 4.9% are 65 years of age or older.[273] This indicates that Iran has a very young population. Combined with education and literacy rates, in conjunction with the continued impact of a globalized world, it seems that the religious elite over time will decrease in influence, if only due to their impending demographic demise. The majority of the population soon will not have been old enough during the Islamic Revolution to have felt a strong tie to the Islamic regime. They have been brought up in a modern age in which international information flows much more smoothly and freely than it did during Khomeini's seizure of power and the aftermath of his Islamization of Iran. Ironically, it seems that it has been the Islamic polity that has provided an environment appropriate for the emergence of widespread social dissatisfaction. Birthrates have soared, illiteracy has decreased, and there are now more post-secondary students (the majority of whom are women) than ever before, many of whom are either unemployed or underemployed.

To date, the unemployment rate is at roughly 30% or more, the underemployment rate remains around 75%, and the inflation rate appears to have the potential to be anything from 40% to 200%, depending upon the source of the

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[273] CIA – The World Fact Book. https://www.cia.gov/cia/publications/factbook/print/ir.html Accessed September 13, 2006.

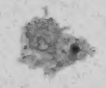
figure. Though the overall percentage of employed women has increased over the decades, one must note that, in the public sector, only a very small proportion (roughly five percent) of women are in high-level management and decision-making positions. According to one United Nations report, even though women are "guaranteed equal rights to those of males, several occupations explicitly restrict the employment of women."[274] For example, women are not appointed as judges, nor are they recruited into the armed forces. What modernists have been striving towards is the creation of a civil society, separate from Islam, capable of combating such social and political grievances. The segregation of genders succeeds only in reducing men and women, especially, to nothing more than sexual objects, denying them a common sense of humanity, and diminishing their existence to one based solely on sexual function. The young, educated Iranian population of today will not stand for this sort of outdated organization of society. Recent years have witnessed modestly dressed women invade the work force and demand equal rights, particularly in the areas of divorce and inheritance. In an unprecedented move, Islamic and secular feminist organizations have decided to champion a common cause: the advancement of women's rights as the beginning of an advancement of human rights.

Interestingly, one important realm in which women have been making progress is the political system. Although, women's access to politics came later to Iran than to many other developed nations (in Iran women first voted in 1963; in Canada, for example, women voted in 1921), they are now making gains in terms of

[274] United Nations 37.

their representation. For example, according to recent United Nations Development Reports, the percentage of women in Ministerial level positions in Iran in 2005 was 0.1%.[275] Although this percentage appears to be extremely low, it may be helpful to note that in the same year, Canada had only 0.2% of Ministerial level positions occupied by women. Additionally, there has been an increase in the past fifteen years in the number of Iranian women who occupy seats in the lower house of Parliament. Whereas in 1990, women occupied 2.0% of all seats in the lower house of Parliament, their representation grew to 4.1% by 2005. This is an increase of 16.1%. Bearing in mind that women continue to become more educated and oppose hard-line infringements on their rights, it seems that this trend will continue.

In brief, it appears that the forced reforms of the Shah and the reactionary policies of Khomeini have resulted in a major clash between two opposing faces of Islam: modernizers and traditionalists. For a moment, until the election of a hard-liner President again in 2005, it appeared as if those advocating more democratic changes were gaining ground, but the situation remains unpredictable and it seems probable that the clash between the religious elite and conservative government on the one hand, and the young, educated and dissatisfied population on the other, will continue for years to come. According to one Iranian diplomat, there exists a trend in the Islamic world that "when people get worried about social problems, the old guard, or fundamentalists, resort to fundamentalist punishments."[276]



[275] United Nations Human Development Reports – Country Sheet: Iran. http://hdr.undp.org/statistics/data/countries.cfm?c=IRN Accessed on September 15, 2006.
[276] Theodoulu, "Iran's Culture War Intensifies," *Christian Science Monitor* 93.187 (2001) 6.

It seems that another revolution is necessary to elicit any sort of legitimate change within the political framework of the Islamic Republic of Iran. The fact remains that the sort of social changes desired by Iranians cannot possibly be achieved within the framework of a system that so blatantly favors retention of true strength by religious conservatives. Parliamentary reform may never be enough to impact significantly the lives of women in Iran. As stated before, the Iranian government may exist under the veil of democratic elections, but the reality of the political climate is such that power remains in the hands of those who oppose any sort of reform. It would be naïve to believe that Islamic traditionalists would be willing to make concessions merely due to the fact that people want change.

There exist many factors that have contributed to the second Iranian revolution and the current state of the Islamic Republic today. The Islamic Revolution, spearheaded by the Ayatollah Khomeini was initiated clearly as a movement of the people, themselves. Throughout the two decades that have passed since the fall of the Shah, the Iranian population has become increasingly cosmopolitan, has experienced a deterioration of living conditions, and has begun to consider much of what the religious conservatives propound as being archaic and no longer applicable to modern Iran. Religions do not modernize, people do; when a people choose to modernize, their way of looking at their religion changes. Reformists within Iran seem to believe that although Islam is not of modernity, it is compatible with a modern perspective. A growing number of Muslims are trying to reconcile moral and religious tenets with modern life, political competition, and free

markets. How this will translate to the lives of women over the long run remains to be seen.

Conclusion

Iran is an excellent case study in which to consider the effect of Islamic law on the status and rights of women within a contemporary setting. Islamic Law is a unique and fascinating phenomenon that captures within it a tension between the spiritual and temporal world, a debate on interpretation and application, and a tension between those who today advocate for either modern or traditional readings of the scriptural texts. The scope of issues pertaining to this subject matter span far more than those linked to notions of law within a Western concept. A sampling would include issues of morality, justice, social relations, personal worship, public image and societal values. To add to the complexity of this study is the fact that the seventh century retains ideological significance still – one to which the contemporary Muslim world feels attachment. It is fascinating to examine how interpretations of seventh century ideals can be isolated and then reintroduced to the twenty-first century. Certainly there are incompatibilities; these are most clearly evidenced when matters of socio-historical context are not considered.

As such, it is important to consider whether the Islamic system has actually disadvantaged women, or whether women have been able to take advantage of it in order to benefit their overall status within Iran. Though restrictive, have Iranian women been able to overcome the oppression of Khomeini and the religious elite today? The exanimation conducted in this thesis seems to indicate that, contrary to

conventional wisdom, an Islamic regime need not be feared necessarily as being anti-feminist. Although an Islamic regime is different from a more secular form of governance, it does not necessarily oppress women. In fact, observance and adherence to Islamic principles, as interpreted in the Qur'an and Hadith, would result in just, ethical and kind treatment of women, if the intentions of the Prophet are factored into decisions of the ruling elite.

Within the Islamic Republic of Iran today, abuses of the rights of women and the positioning of their roles within society remain in flux. On the one hand, their daily lives remain affected by state-interpreted and enforced hard-line religious principles. On the other, they now have access to information technology and sharing within a global context as never before; this fact, combined with the relatively young age of the population as a whole, results in a paradoxical lifestyle. Iranian women are educated, have access to the workforce and desire the material goods and liberal freedoms that they observe other women to enjoy within the Western world. Under their veils many wear the most current fashions and take great pride is appearing alluring, not modest. Though forced to conceal their true images beneath a religiously ordained dress code, more and more the bounds of modesty and acceptability are tested. Although the religious elite retains its grip on national laws and still has final say on what constitutes social acceptability within the public sphere, the young, educated Iranian women, who today represent 62% of all persons attending University, will not allow themselves to be oppressed by hard-line thought for that much longer. Already, there is a push-back by women in the realm

of the public sphere, as evidenced by the continuing frequency and increasing rate of cases of "poor *hejab*" (i.e. inadequate veiling). This move is reinforced also by women demanding to be allowed a divorce and by have pre-marital agreements which provide them that right and others. As the country's population continues to age, fewer and fewer Iranians – men and women alike – will have even a memory of life under the Shah and the subsequent Islamic Revolution. Rather, their focus will be on their current lives and the comparisons that they will make to the lives of others within the West. Whether increased rights and freedoms will be negotiated within the governance structure of the state (i.e. parliamentary reform) or through popular dissent and subsequent state laxness remains to be seen. Either way, the increased and continuing liberalization of Iranian society is a very distinct possibility.

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